

RESOLUTION NO. R20-__

A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS APPROVING AN INTERLOCAL AGREEMENT BETWEEN THE TOWN OF ADDISON, TEXAS (CITY) AND DALLAS COUNTY, TEXAS (COUNTY) FOR THE DISTRIBUTION OF CARES ACT FUNDS FOR AUTHORIZED ACTIVITIES; AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT; AND, PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City is a “local government” as defined by Texas Government Code § 791.003(4)(A) and desires to enter into this Agreement pursuant to Texas Government Code, Chapter 791; and

WHEREAS, the County is in receipt of funds from the United States Treasury Department under the Coronavirus Aid, Relief, and Economic Security Act also known as the “CARES Act”; and

WHEREAS, the County desires to contract, with the City for the administration of the distribution of some of Dallas County’s CARES Act funds by providing funds to the City for authorized CARES Act activities; and

WHEREAS, the County has the authority under Chapter 791, Texas Government Code to contract with other local governments for government functions and services; and

WHEREAS, the County wishes to engage the services of the City for the administration of the distribution of a portion of the County’s CARES Act funds in accordance with the Guidance from the United States Treasury Department; and

WHEREAS, the City is capable of providing the services and related activities for the appropriate distribution of CARES Act funds; and

WHEREAS, on March 12, 2020, the Dallas County Judge declared a local state of disaster for a public health emergency in relation to COVID-19; and

WHEREAS, on March 13, 2020, the Governor of the State of Texas declared a state of disaster and the President of the United States declared a national emergency in relation to COVID-19; and

WHEREAS, the Governor of Texas, on March 13, 2020, invoked Texas Government Code §418.017 in his state-wide disaster declaration, to “authorize the use of all available resources of state government and of political subdivisions that are reasonably necessary to cope with this disaster”, and

WHEREAS, some local businesses and residents have experienced extraordinary economic strain due to state and local regulations related to the COVID-19; and

WHEREAS, the County finds that the expenditure of public funds in support of the operations of the City’s businesses and residents, especially in this time of a pandemic crises, accomplishes a valid public purpose of protecting the Dallas County economy and the economic welfare of the residents of Dallas County; and

WHEREAS, the City will serve a benefit to all Dallas County residents during this pandemic, providing essential assistance to residents and businesses within the City; and

WHEREAS, the Parties desire to enter into this Agreement for the purposes stated herein; and

WHEREAS, these Recitals are incorporated into this Agreement and are expressly made a part of this Agreement; and

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS:

SECTION 1. The facts and recitations contained in the preamble of this Resolution are hereby found and declared to be true and correct.

SECTION 2. The Interlocal Agreement, attached as **Exhibit A** and incorporated herein, is hereby approved. The City Secretary is directed to Attest said document.

SECTION 3. This Resolution shall take effect from and after its date of adoption.

DULY RESOLVED AND ADOPTED by the City Council of the Town of Addison, Texas, on this the 9th day of June 2020.

TOWN OF ADDISON, TEXAS

Joe Chow, Mayor

ATTEST:

APPROVED AS TO FORM:

Irma Parker, City Secretary

Brenda N. McDonald, City Attorney

WHEREAS, on March 13, 2020, the Governor of the State of Texas declared a state of disaster and the President of the United States declared a national emergency in relation to COVID-19; and

WHEREAS, the Governor of Texas, on March 13, 2020, invoked Texas Government Code § 418.017 in his state-wide disaster declaration, to “authorize the use of all available resources of state government and of political subdivisions that are reasonably necessary to cope with this disaster”, and

WHEREAS, some local businesses and residents have experienced extraordinary economic strain due to state and local regulations related to the COVID-19; and

WHEREAS, the County finds that the expenditure of public funds in support of the operations of the City’s businesses and residents, especially in this time of a pandemic crises, accomplishes a valid public purpose of protecting the Dallas County economy and the economic welfare of the residents of Dallas County; and

WHEREAS, the City will serve a benefit to all Dallas County residents during this pandemic, providing essential assistance to residents and businesses within the City; and

WHEREAS, the Parties desire to enter into this Agreement for the purposes stated herein; and

WHEREAS, these Recitals are incorporated into this Agreement and are expressly made a part of this Agreement; and

NOW THEREFORE, in consideration of the promises and agreements hereinafter set forth, the Parties agree as follows:

2. TERM:

The term of this Agreement shall begin upon day this Agreement last executed by the Parties and continue until the services are rendered and the CARES Act funds under this Agreement are distributed, unless terminated earlier under any provision hereof. Notwithstanding the foregoing, the services and deliverables herein shall be completed by November 30, 2020 (the “Term”).

3. INCORPORATED DOCUMENTS:

The following documents are incorporated by reference as if fully reproduced herein:

- (a) **Exhibit A-** Coronavirus Relief Fund Guidance for State, Territorial, Local, and Tribal Governments from the United States Treasury Department.

4. ORDER OF PRECEDENCE:

In the event of any conflict or inconsistency between or among the provisions of this Agreement or any incorporated or referenced document or any exhibit, attachment, or associated document, such conflict or inconsistency shall be resolved in the following order of precedence: (1) this Agreement and any subsequent amendments; then (2) Exhibit A.

5. CITY'S SCOPE OF SERVICES AND OBLIGATIONS:

- (a) The City shall distribute the CARES Act funds provided by the County in accordance with the guidance as detailed in the attached and incorporated **Exhibit A**.
- (b) The City may choose to set up programs such as housing assistance for its residents and grants and loans for its businesses.
- (c) The City shall only disburse the CARES Act funds within its municipal corporate limits to eligible residents and individuals as determined by the City in compliance with the guidance in **Exhibit A**.
- (d) The City shall not be permitted to duplicate any efforts the County is undertaking for the County's CARES Act funding programs. For example, the County is beginning emergency assistance programs for daycare facilities, small business loans and grants, and emergency housing and rental assistance for residents. For purposes of clarity, if a resident is a recipient of assistance from a County program, then the resident shall be automatically disqualified from the any further City assistance with CARES Act funds. The same disqualification shall apply to businesses within the City.
- (e) The City shall keep the County informed of all expenditures made under this Agreement on a monthly basis during the Term in any format of report or reporting as determined in the County's sole discretion.
- (f) The City shall comply with the terms, conditions, and structure of the Funding Formula in Section 6 below.
- (g) The City shall return any unspent funds to the County by December 11, 2020.

6. COUNTY'S OBLIGATIONS:

County agrees to perform the following:

- (a) Dallas County will assist City in scheduling appointments with key County personnel and employees;
- (b) Dallas County shall maintain supervisory control of the ultimate disbursement of funds under any program or disbursement approved by the City;
- (c) Dallas County will provide funding in an amount of up to of **fifty-five dollars (\$55)** per City resident based on the 2019 estimated population. The estimated population under this formula and the amount of funds provided to City shall be in the sole discretion of the County (hereinafter "Funding Formula").
 - 1. Under this Funding Formula, the County will provide **twenty percent (20%)** of the eligible funds under this Agreement to the

City upon execution of this Agreement. The City may apply for the further disbursement of funds for specific projects, programs, or purchases from the County for the remaining **eighty percent (80%)** of the eligible funding under this Funding Formula during the duration of this Agreement.

2. For the remaining **eighty percent (80%)** under this Funding Formula, the City shall seek pre-approval from the County for any proposed program, initiative, or disbursement of funds. Once written approval is obtained from the County, the City may seek a disbursement for that specific program, initiative, or project from the County.

7. TERMS AND CONDITIONS:

County agrees to provide CARES Act funding to City for approved budget expenses incurred and for documented units of services performed, subject to the following limitations:

- (a) **Not to Exceed Amount.** City understands and agrees that the maximum total amount payable for the services and funds distributed described herein shall not exceed **the amount as determined by the Funding Formula detailed in Section 6(c) above** (hereinafter "Not to Exceed Amount") unless a formal written amendment is executed by the Parties hereto and is formally approved by the Commissioners Court. County shall not pay for any services nor distribute any funds that would cause the amounts described herein in excess of the Not to Exceed Amount. Within this Not to Exceed Amount the City may fund its internal and indirect costs for administering the CARES Act funds in an amount not to exceed **ten percent (10%)** of all funds received under this Agreement.
- (b) City agrees to submit complete, fully documented, and accurate itemized invoices, receipts, and other appropriate documentation, as required by County, following the completion of the services and disbursement of the funds. Specifically, the invoices, receipts, and other documentation shall be itemized and include supporting documentation and any management fees. Within the supporting documentation the subcontractor invoices shall be included, if any. All required documentation shall be submitted on the first day of each month during the Term of this Agreement as expenses are incurred or funds are disbursed. All documentation submitted shall represent the services rendered and funds disbursed by Contractor for the previous month.
- (c) **Twenty percent (20%)** of the available funds under this Agreement and the Funding Formula will be made to the City upon execution of the Agreement. The City may apply for further funds of the remaining **eighty percent (80%)** as described in the Funding Formula through the duration of this agreement. The County may in its sole discretion disallow or refuse to fund any activity for which further funding is sought by the City that is not in compliance with **Exhibit A**. Further, the County may withhold further funding from the City if the City fails to comply with County's reporting requirements, performance objectives, or other

requirements relating to City's performance of work, deliverables, and services under this Agreement. County shall pay the City only for those reimbursable costs that are allowable under applicable rules and regulations, as stated in this Agreement. Should the United States Treasury Department, the United States Congress, the Executive Branch of Federal Government, the Federal Judiciary, or any other Federal Agency with jurisdiction issue further guidance on the appropriate use of the CARES Act funds, that further guidance shall be automatically incorporated into this Agreement in **Exhibit A** without the need for a formal amendment. County shall have the right to withhold all or part of any reimbursement funds to the City to offset any reimbursement made to City for ineligible expenditures or undocumented units of services billed as determined by the County in its sole discretion.

- (d) City understands and agrees that all documentation must be submitted to County on a rolling monthly basis during the Term of this Agreement. All receipts and expenditures must have appropriate supporting documentation before such billings will be approved.
- (e) The Dallas County Auditor is responsible for monitoring fiscal compliance activities and shall resolve any dispute between the Parties regarding County's payments to City for services rendered under this Agreement.
- (f) Prior Debts. County shall not be liable for costs incurred or performances rendered by City before or after the Term; for expenses not billed to County within the applicable time frames set forth in this Agreement; or for any payment for services or activities not provided pursuant to the terms of this Agreement.
- (g) Refund provision. The County shall have the right to demand repayment of any funds paid to City for services rendered or funds disbursed that did not comply with the terms of this Agreement or that were determined to be ineligible expenditures by the County or the Federal Government. The City shall promptly refund any monies previously paid or disbursed by County that the County, in its sole discretion, determines were used for services or activities that were not in compliance with this Agreement.

8. REPORTING AND ACCOUNTABILITY:

- (a) Reporting. City agrees to submit all required documentation and reports on a timely basis and in accordance with the specified time frames pursuant to this Agreement. Penalties for delinquent reporting may include withholding of payments until such time all reports are received, cancellation and/or termination of this Agreement with no obligation to pay for undocumented or ineligible services, or both.
- (b) Access to Records. City agrees that County, or any of its duly authorized representatives, or the Federal Government has the right of timely and unrestricted access to any books, documents, papers, reports, or other records of City that are pertinent to the fulfillment of the requirements of this Agreement, in order to make audit, examinations, excerpts, transcripts, and copies of such documents. This right also includes timely and reasonable

access to City's personnel for the purpose of reviewing, interviewing, evaluating, and monitoring related to such documents. All such items shall be furnished to the County in Dallas County, Texas.

- (c) Ownership. City agrees that all information, data, and supporting documentation that relates to the services provided hereunder shall remain the property of City.
- (d) Maintenance of Records. City's records, books, and other documents reasonably related to this Agreement shall be kept and maintained in standard accounting form. Such records, books, and documents shall be made available in Dallas County subject to inspection by County or authorized County personnel upon request.
- (e) Audit. The Dallas County Auditor, its assigns, or any other governmental entity approved by County shall have the unrestricted right to audit all data or documents related to this Agreement. Such data shall be furnished in Dallas County at a mutually convenient time within a reasonable time. Should County determine it reasonably necessary, City shall make all of its records, books, and documents reasonably related to this Agreement available to authorized County personnel, at reasonable times and within reasonable periods, for inspection or auditing purposes or to substantiate the provisions of services under this Agreement.
- (f) Retention of Records. All records, books, and documents reasonably related to this Agreement shall be maintained and kept by City for a minimum of four (4) years and ninety (90) days after termination or expiration of this Agreement. If any litigation, claim, or audit involving these documents or records begins before the specified period expires, City must keep the records and documents for not less than four (4) years and ninety (90) days and until all litigation, claims, or audit findings are resolved, whichever is later. **City is strictly prohibited from destroying or discarding any records, books, or other documents reasonably related to this Agreement, unless the time period for maintaining such under this subsection (f) has lapsed.**

9. CONFIDENTIALITY:

- (a) City shall not disclose privileged or confidential communications or information acquired in the course of the performance under this Agreement, unless authorized by law. City agrees to adhere to all confidentiality requirements, as applicable, for performance under this Agreement.
- (b) Public Information Act. The Parties acknowledge and agree that County and City are subject, as a matter of law, to Texas Government Code, Chapter 552, also known as the "Texas Public Information Act" (hereinafter "Public Information Act"). Notwithstanding any other provision, the Parties agree that in the event that any provision of this Agreement, or other documents related to this Agreement, including, but not limited to, any exhibit, attachment, amendment, addendum, or other incorporated document, is in conflict with the Public

Information Act, such provision shall be of no force or effect. Furthermore, it is expressly acknowledged and agreed that the County, County Commissioners Court, County Judge, Elected County Officials, County Department Heads and County Employees (hereinafter "County Requestors") may request advice, decisions and opinions of the Attorney General of the State of Texas in regard to the application of the Public Information Act to any software, hardware, firmware, or any part thereof, or other equipment or item, data or information, or any other thing or item furnished to or in the possession or knowledge of County. It is further acknowledged and agreed that the County Requestors have the right and obligation by law to rely on the advice, decisions and opinions of the Texas Attorney General. City hereby releases the County Requestors from any and all liability or obligation of any type, kind or nature regarding any disclosure of any software, hardware, firmware, or any part thereof, or other equipment or item, data or information, or any other thing or item furnished by City or in the possession or knowledge of the County that is determined by County or in reliance on any advice, decision or opinion of the Texas Attorney General to be available to the public or any persons.

- (c) Any Public Information Act request received by the City or County for documents related to this Agreement or any program undertaken pursuant to this Agreement shall be handled by the entity who received the Public Information Act request.
- (d) Notwithstanding the foregoing, the Parties agree, to the extent permitted by the Public Information Act, to keep confidential (and store in a secure area with limited access) and will not copy, publish, sell, exchange, disclose, or provide to others or use any information, documents or data, provided to or disclosed to the other Party, or any information related to this Agreement, including, but not limited to, any exhibit, attachment, amendment, addendum, or other incorporated document, for any purposes other than performing each Party's obligations under this Agreement.

10. INDEMNIFICATION:

THE PARTIES AGREE TO BE RESPONSIBLE EACH FOR THEIR OWN NEGLIGENT ACTS OR OMISSIONS, OR OTHER TORTIOUS CONDUCT IN THE COURSE OF PERFORMANCE OF THIS AGREEMENT WITHOUT WAIVING ANY SOVEREIGN IMMUNITY, GOVERNMENTAL IMMUNITY OR OTHER DEFENSES AVAILABLE TO THE PARTIES UNDER FEDERAL OR STATE LAW. NOTHING IN THIS PARAGRAPH SHALL BE CONSTRUED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, IN OR TO ANY THIRD PERSONS OR ENTITIES. THE PARTIES AGREE THAT ANY SUCH LIABILITY OR DAMAGES OCCURRING DURING THE PERFORMANCE OF THIS AGREEMENT CAUSED BY THE JOINT OR COMPARATIVE NEGLIGENCE OF THE PARTIES, OR THEIR EMPLOYEES, AGENTS OR OFFICERS, SHALL BE DETERMINED IN ACCORDANCE WITH COMPARATIVE RESPONSIBILITY LAWS OF TEXAS.

11. INSURANCE:

City and County agree that they will, at all times during the Term of this Agreement, maintain in full force and effect insurance or self-insurance to the extent permitted by applicable laws, and that is maintained at appropriate levels of insurance commensurate with each Party's obligations hereunder and in accordance with sound accounting practices. City and County will be responsible for their respective costs of such insurance, any and all deductible amounts in any policy and any denials of coverage made by their respective insurers.

12. EXPENSES

Unless prior written approval by County is obtained or otherwise detailed in this Agreement, City shall be responsible for all mileage and other miscellaneous expenses related to the fulfillment of the requirements of this Agreement. Mileage and other miscellaneous expenses shall be included in the Not to Exceed Amount.

13. TERMINATION:

(a) Suspension. Should County desire to suspend the services, but not terminate the Agreement, County shall issue a written order to stop work. The written order shall set out the terms of the suspension. The City shall stop all services as set forth in this Agreement and will cease to incur costs to County or disburse funds during the term of the suspension. City shall resume work when notified to do so by County in a written authorization to proceed. If a change in the terms and conditions of payment for services of this Agreement is necessary because of a suspension, a mutually agreed contract amendment will be executed in accordance with this Agreement.

(b) Termination. The County, at its option and without prejudice to any other remedy to which it may be entitled to at law or in equity, or elsewhere under this Agreement, terminate this Agreement, in whole or part, by giving thirty (30) days prior written notice thereof to the City with the understanding that all services being performed under this Agreement shall cease upon the date specified in such notice. In the event of cancellation, City shall cease any and all services under this Agreement or disbursement of funds on the date of termination and to the extent specified in the notice of termination. Upon receipt of such notice, City shall not incur any new obligations or perform any additional services and shall cancel any outstanding obligations or services to be provided. Upon termination of this Agreement as herein above provided, any and all unspent funds that were paid or provided by County to City under this Agreement and any and all County data, documents and information in City's possession shall be returned to County within five (5) working days of the date of termination. In no event shall County's termination of this Agreement, for any reason, subject County to liability.

1. Without Cause: This Agreement may be terminated, in whole or in part, without cause, by County upon thirty (30) days prior written notice to the City.

2. With Cause: County reserves the right to terminate this Agreement immediately, in whole or in part, at its sole discretion, for the following reasons:
- A. Lack of, or reduction in, funding or resources in accordance with Section 29 (Fiscal Funding Clause);
 - B. Non-performance by City or City's failure or inability to perform or substantially perform, for whatever reason, the services required or funds to be disbursed under this Agreement;
 - C. City's improper, misuse or inept use of CARES Act funds under this Agreement;
 - D. City's failure to comply with the terms and provisions of this Agreement;
 - E. City's submission of invoices, data, statements and/or reports that are incorrect, incomplete, or false in any way;
 - F. City's failure to comply with County's reporting requirements, the program objectives, the terms, conditions, or standards of this Agreement, applicable federal, state, or local laws, rules, regulations and ordinances, or any other requirement set forth in this Agreement;
 - G. City's failure to perform the work and services required by this Agreement within the time specified herein or any extension thereof;
 - H. City's inability to perform under this Agreement due to judicial order, injunction or any other court proceeding.

14. NOTICE:

Any notice to be given under this Agreement shall be deemed to have been given if reduced to writing and delivered in person or mailed by overnight or Registered Mail, postage pre-paid, to the party who is to receive such notice, demand or request at the addresses set forth below. Such notice, demand or request shall be deemed to have been given three (3) days subsequent to the date it was so delivered or mailed.

TO COUNTY:

Judge Clay Jenkins
Dallas County
411 Elm St. 2nd Floor
Dallas County, Texas 75202
(214) 653-6018 (office)

(214) 653-7449 (fax)

With a copy to:

Russell Roden
Chief, Civil Division
Dallas County District Attorney's Office
411 Elm Street, 5th Floor
Dallas, Texas 75202

To City:

Joe Chow, Mayor
5300 Belt Line Road
Dallas, Texas 75254
(972) 450-7000 (office)

With a copy to:

Wesley S. Pierson, City Manager
5300 Belt Line Road
Dallas, Texas 75254
(972) 450-7000 (office)

15. SEVERABILITY:

If any provision of this Agreement is construed to be illegal or invalid, this will not affect the legality or validity of any of the other provisions in this Agreement. The illegal or invalid provision will be deemed stricken and deleted, but all other provisions shall continue and be given effect as if the illegal or invalid provisions had never been incorporated.

16. IMMUNITY:

This Agreement is expressly made subject to County's Sovereign Immunity, Title 5 of the Texas Civil Practices and Remedies Code and the City's governmental immunity, and all applicable federal and state law. The Parties expressly agree that no provision of this Agreement is in any way intended to constitute a waiver of any immunities from suit or from liability that the County or City has by operation of law.

17. COMPLIANCE WITH LAWS:

In providing services required by this Agreement, City must observe and comply with all applicable federal, state, and local statutes, ordinances, rules, and regulations. City shall be responsible for ensuring its compliance with any laws and regulations applicable to its operations and functions.

18. GOVERNING LAW AND VENUE:

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The validity and interpretation of this Agreement, and the rights and obligations of the Parties hereunder, shall be governed by and construed in accordance with the laws of the State of Texas and any applicable guidance from the Federal Government or Federal Agency. This Agreement is performable and enforceable in Dallas County, Texas where the principal office of County is located and the state or federal courts of Dallas County shall be the sole and exclusive venue for any litigation, special proceeding, or other proceeding as between the Parties that may be brought, or arise out of, in connection with, or by reason of this Agreement.

19. AMENDMENTS AND CHANGES IN THE LAW:

No modification, amendment, novation, renewal or other alteration of this Agreement shall be effective unless mutually agreed upon in writing and executed by the Parties hereto. Any alteration, addition or deletion to the terms of this Agreement which are required by changes in federal law, federal guidance, or state law are automatically incorporated herein without written amendment to this Agreement and shall be effective on the date designated by said law or guidance.

20. THIRD PARTIES:

The obligations of each Party to this Agreement shall inure solely to the benefit of the other Party, and no other person or entity shall be a third party beneficiary of this Agreement or have any right to enforce any obligation created or established under this Agreement.

21. ASSIGNMENT:

City may not assign its rights and duties under this Agreement. Any assignment attempted shall be null and void.

22. CONTRA PROFERENTUM:

The doctrine of contra proferentum shall not apply to this Agreement. If an ambiguity exists in this Agreement, the Agreement shall not be construed against the Party who drafted the Agreement and such Party shall not be responsible for the language used.

23. ENTIRE AGREEMENT:

This Agreement, including its Attachments, Exhibits, and Addendums incorporated as a part hereof, shall constitute the entire agreement relating to the subject matter hereof between the Parties hereto and supersedes any other agreement concerning the subject matter of this transaction, whether oral or written, and except as otherwise provided herein, this Agreement may not be modified without prior written agreement of the Parties. Each Party acknowledges that the other Party, or anyone acting on behalf of the other Party has made no representations, inducements, promises or agreements, orally or otherwise, unless such representations, inducements, promises or agreements are embodied in this Agreement, expressly or by incorporation.

24. BINDING EFFECT:

This Agreement and the respective rights and obligations of the Parties hereto shall inure to the benefit and be binding upon the successors and assigns of the Parties hereto, as well as the Parties themselves.

25. REMEDIES/WAIVER OF BREACH:

Pursuit of any remedy provided in this Agreement shall not preclude pursuit of any other remedies herein provided or any other remedies provided by law or equity, including injunctive relief, nor shall pursuit of any remedy herein provided constitute a forfeiture or waiver of any obligation of the defaulting Party hereunder or of any damages accruing by reason of the violation of any of the terms, provisions, and covenants herein contained. No waiver of any term, covenant, condition or violation of this Agreement shall be deemed or construed to constitute a waiver of any other violation or breach of any of the terms, provisions, and covenants herein contained, and forbearance to enforce one or more of the remedies herein provided upon an event of default shall not be deemed or construed to constitute a waiver of such default. Any waiver of any provision of this Agreement or violation thereof must be by a written instrument.

26. FEDERAL FUNDED PROJECT:

If this Agreement is funded by the federal government; therefore, the City agrees to timely comply, without additional cost or expense to County, unless otherwise specified herein, with any statute, rule, regulation, grant, contract provision, subsequent federal guidance or other state or federal law, rule, regulation, or other similar restriction that imposes additional or greater requirements than stated herein and that is directly applicable to the services rendered or funds provided under the terms of this Agreement.

27. DEFAULT/CUMULATIVE RIGHTS/MITIGATION:

It is not a waiver of default if the non-defaulting party fails to immediately declare a default or delays in taking any action. The rights and remedies provided by this Agreement are cumulative, and either Party's use of any right or remedy will not preclude or waive its right to use any other remedy. These rights and remedies are in addition to any other rights the Parties may have by law, statute, ordinance or otherwise. City and County both have a duty to mitigate damages.

28. PREVENTION OF FRAUD AND ABUSE:

City shall establish, maintain and utilize internal management procedures sufficient to provide for the proper, effective management of all activities funded under this Agreement. Any known or suspected incident of fraud or program abuse involving City's employees or agents shall be reported immediately to the County by City. Moreover, City warrants that it is not listed on a local, county, state or federal consolidated list of debarred, suspended and ineligible contractors and grantees. City and County agree that every person who, as part of their employment,

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receives, disburses, handles or has access to funds collected pursuant to this Agreement does not participate in accounting or operating functions that would permit them to conceal accounting records and the misuse of said funds. City shall, upon notice by County, refund expenditures of the City that are contrary to this Agreement and deemed inappropriate by the County.

29. FISCAL FUNDING CLAUSE:

Notwithstanding any provisions contained herein, the obligations of the County under this Agreement is expressly contingent upon the availability of funding for each item and obligation contained herein for the term of the Agreement and any extensions thereto. City shall have no right of action against County in the event County is unable to fulfill its obligations under this Agreement as a result of lack of sufficient funding for any item or obligation from any source utilized to fund this Agreement or failure to budget or authorize funding for this Agreement during the current or future fiscal years. In the event that County is unable to fulfill its obligations under this Agreement as a result of lack of sufficient funding, or if funds become unavailable, County, at its sole discretion, may provide funds from a separate source or may terminate this Agreement by written notice to City at the earliest possible time.

30. COUNTERPARTS, NUMBER/GENDER AND HEADINGS:

This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument. Words of any gender used in this Agreement shall be held and construed to include any other gender. Any words in the singular shall include the plural and vice versa, unless the context clearly requires otherwise. Headings herein are for the convenience of reference only and shall not be considered in any interpretation of this Agreement.

31. INDEPENDENT CONTRACTOR:

City, including its employees, agents or licensees, is an independent contractor and not an agent, servant, joint enterprise or employee of the County, and is responsible for its own acts, omissions, forbearance, negligence and deeds, and for those of its agents or employees in conjunction with the performance of services or disbursement of funds covered under this Agreement, and shall be specifically responsible for sufficient supervision and inspection to ensure compliance in every respect with the contract requirements. There shall be no contractual relationship between any subcontractor, agent, employee or supplier of the City and the County by virtue of this Agreement.

32. SUBCONTRACTING:

The costs of all subcontracted services are included in the fees distributed herein. Subcontracts entered into by the City will be in writing and subject to all requirements herein. City agrees that it will solely be responsible to County for the performance of this Agreement. City shall pay all subcontractors in a timely manner. County shall have the right to prohibit City from using any

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subcontractor.

33. PROMPT PAYMENT ACT:

City agrees that a temporary delay in making payments due to the County's accounting and disbursement procedures shall not place the County in default of this Agreement and shall not render the County liable for interest or penalties, provided such delay shall not exceed thirty (30) days after its due date. Any payment not made within thirty (30) days of its due date shall bear interest in accordance with Chapter 2251 of the Texas Government Code.

34. TAX

Dallas County, as a county of the State of Texas, is exempted from the payment of Texas state and local sales, excise, and use taxes pursuant to Tex. Loc. Gov't Code § 151.309, and shall therefore not be liable or responsible to the City for the payment of such taxes under this Agreement.

The fees paid to City pursuant to this Agreement are inclusive of any applicable sales, use, personal property or other taxes attributable to periods on or after the applicable effective date of this Agreement and based upon or measured by City's cost in acquiring or providing products and/or services and related materials and supplies furnished or used by City in performing his obligations hereunder, including all personal property and use taxes, if any, due on equipment or software owned by City.

City accepts full and exclusive liability for the payment of any and all contributions or taxes for Social Security, Workers' Compensation Insurance, Unemployment Insurance, or Retirement Benefits, Pensions, or annuities now or hereafter imposed under any state or federal laws which are measured by the wages, salaries, or other remuneration pay to persons employed by City for work performed under the terms of this Agreement.

35. SIGNATORY WARRANTY:

The undersigned signatories for the Parties hereby represent and warrant that they are officers of their respective organizations for which they have executed this Agreement and that they have full and complete authorities to enter into this Agreement on behalf of their respective organizations and that the executions thereof are the acts of the parties involved and have been delivered and constitute legal, valid and binding obligations of the respective Parties.

36. ACCEPTANCES

By their signatures below, the duly authorized representatives of County and City accept the terms of this Agreement in full.

EXECUTED this _____ day of _____, 2020.

DALLAS COUNTY:

TOWN OF ADDISON:

BY: Clay Jenkins
Dallas County Judge

BY: Wesley S. Pierson
City Manager

Recommended:

BY: Darryl Martin
Dallas County Administrator

Approved as to Form:
Brenda McDonald, City Attorney

***Approved as to Form:**
JOHN CREUZOT
DISTRICT ATTORNEY

BY: Randall Miller
Assistant District Attorney
Dallas County DA's Office, Civil Division

*By law, the District Attorney's Office may only advise or approve contracts or legal documents on behalf of its clients. It may not advise or approve a contract or legal document on behalf of other parties. Our review of this document was conducted solely from the legal perspective of our client. Our approval of this document was offered solely for the benefit of our client. Other parties should not rely on this approval, and should seek review and approval by their own respective attorney(s).

EXHIBIT A

Coronavirus Relief Fund Guidance for State, Territorial, Local, and Tribal Governments April 22, 2020

The purpose of this document is to provide guidance to recipients of the funding available 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”). The CARES Act established the Coronavirus Relief Fund (the “Fund”) and appropriated \$150 billion to the Fund. Under the CARES Act, the Fund is to be used to make payments for specified uses to States and certain local governments; the District of Columbia and U.S. Territories (consisting of the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands); and Tribal governments.

The CARES Act provides that payments from the Fund may only be used to cover costs that—

1. are necessary expenditures incurred due to the public health emergency with respect to the Coronavirus Disease 2019 (COVID-19);
2. 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 government; and
3. were incurred during the period that begins on March 1, 2020, and ends on December 30, 2020.¹

The guidance that follows sets forth the Department of the Treasury’s interpretation of these limitations on the permissible use of Fund payments.

Necessary expenditures incurred due to the public health emergency

The requirement that expenditures be incurred “due to” the public health emergency means that expenditures must be used for actions taken to respond to the public health emergency. These may include expenditures incurred to allow the State, territorial, local, or Tribal government to respond directly to the emergency, such as by addressing medical or public health needs, as well as expenditures incurred to respond to second-order effects of the emergency, such as by providing economic support to those suffering from employment or business interruptions due to COVID-19-related business closures.

Funds may not be used to fill shortfalls in government revenue to cover expenditures that would not otherwise qualify under the statute. Although a broad range of uses is allowed, revenue replacement is not a permissible use of Fund payments.

The statute also specifies that expenditures using Fund payments must be “necessary.” The Department of the Treasury understands this term broadly to mean that the expenditure is reasonably necessary for its intended use in the reasonable judgment of the government officials responsible for spending Fund payments.

Costs not accounted for in the budget most recently approved as of March 27, 2020

The CARES Act also requires that payments be used only to cover costs that were not accounted for in the budget most recently approved as of March 27, 2020. A cost meets this requirement if either (a) the cost cannot lawfully be funded using a line item, allotment, or allocation within that budget *or* (b) the cost

¹ See Section 601(d) of the Social Security Act, as added by section 5001 of the CARES Act.

is for a substantially different use from any expected use of funds in such a line item, allotment, or allocation.

The “most recently approved” budget refers to the enacted budget for the relevant fiscal period for the particular government, without taking into account subsequent supplemental appropriations enacted or other budgetary adjustments made by that government in response to the COVID-19 public health emergency. A cost is not considered to have been accounted for in a budget merely because it could be met using a budgetary stabilization fund, rainy day fund, or similar reserve account.

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

A cost is “incurred” when the responsible unit of government has expended funds to cover the cost.

Nonexclusive examples of eligible expenditures

Eligible expenditures include, but are not limited to, payment for:

1. Medical expenses such as:
 - COVID-19-related expenses of public hospitals, clinics, and similar facilities.
 - Expenses of establishing temporary public medical facilities and other measures to increase COVID-19 treatment capacity, including related construction costs.
 - Costs of providing COVID-19 testing, including serological testing.
 - Emergency medical response expenses, including emergency medical transportation, related to COVID-19.
 - Expenses for establishing and operating public telemedicine capabilities for COVID-19-related treatment.
2. Public health expenses such as:
 - Expenses for communication and enforcement by State, territorial, local, and Tribal governments of public health orders related to COVID-19.
 - Expenses for acquisition and distribution of medical and protective supplies, including sanitizing products and personal protective equipment, for medical personnel, police officers, social workers, child protection services, and child welfare officers, direct service providers for older adults and individuals with disabilities in community settings, and other public health or safety workers in connection with the COVID-19 public health emergency.
 - Expenses for disinfection of public areas and other facilities, *e.g.*, nursing homes, in response to the COVID-19 public health emergency.
 - Expenses for technical assistance to local authorities or other entities on mitigation of COVID-19-related threats to public health and safety.
 - Expenses for public safety measures undertaken in response to COVID-19.
 - Expenses for quarantining individuals.
3. Payroll expenses for public safety, public health, health care, human services, and similar employees whose services are substantially dedicated to mitigating or responding to the COVID-19 public health emergency.

4. Expenses of actions to facilitate compliance with COVID-19-related public health measures, such as:
 - Expenses for food delivery to residents, including, for example, senior citizens and other vulnerable populations, to enable compliance with COVID-19 public health precautions.
 - Expenses to facilitate distance learning, including technological improvements, in connection with school closings to enable compliance with COVID-19 precautions.
 - Expenses to improve telework capabilities for public employees to enable compliance with COVID-19 public health precautions.
 - Expenses of providing paid sick and paid family and medical leave to public employees to enable compliance with COVID-19 public health precautions.
 - COVID-19-related expenses of maintaining state prisons and county jails, including as relates to sanitation and improvement of social distancing measures, to enable compliance with COVID-19 public health precautions.
 - Expenses for care for homeless populations provided to mitigate COVID-19 effects and enable compliance with COVID-19 public health precautions.
5. Expenses associated with the provision of economic support in connection with the COVID-19 public health emergency, such as:
 - Expenditures related to the provision of grants to small businesses to reimburse the costs of business interruption caused by required closures.
 - Expenditures related to a State, territorial, local, or Tribal government payroll support program.
 - Unemployment insurance costs related to the COVID-19 public health emergency if such costs will not be reimbursed by the federal government pursuant to the CARES Act or otherwise.
6. Any other COVID-19-related expenses reasonably necessary to the function of government that satisfy the Fund's eligibility criteria.

Nonexclusive examples of ineligible expenditures²

The following is a list of examples of costs that would *not* be eligible expenditures of payments from the Fund.

1. Expenses for the State share of Medicaid.³
2. Damages covered by insurance.
3. Payroll or benefits expenses for employees whose work duties are not substantially dedicated to mitigating or responding to the COVID-19 public health emergency.

² In addition, pursuant to section 5001(b) of the CARES Act, payments from the Fund may not be expended for an elective abortion or on research in which a human embryo is destroyed, discarded, or knowingly subjected to risk of injury or death. The prohibition on payment for abortions does not apply to an abortion if the pregnancy is the result of an act of rape or incest; or in the case where a woman suffers from a physical disorder, physical injury, or physical illness, including a life-endangering physical condition caused by or arising from the pregnancy itself, that would, as certified by a physician, place the woman in danger of death unless an abortion is performed. Furthermore, no government which receives payments from the Fund may discriminate against a health care entity on the basis that the entity does not provide, pay for, provide coverage of, or refer for abortions.

³ See 42 C.F.R. § 433.51 and 45 C.F.R. § 75.306.

4. Expenses that have been or will be reimbursed under any federal program, such as the reimbursement by the federal government pursuant to the CARES Act of contributions by States to State unemployment funds.
5. Reimbursement to donors for donated items or services.
6. Workforce bonuses other than hazard pay or overtime.
7. Severance pay.
8. Legal settlements.