

REQUEST FOR AGENDA PLACEMENT FORM

Submission Deadline - Tuesday, 12:00 PM before Court Dates

SUBMITTED BY: CJO

TODAY'S DATE: 8/16/22

DEPARTMENT: CJO

COMMISSIONERS COURT

SIGNATURE OF DEPARTMENT HEAD: _____

AUG 22 2022

REQUESTED AGENDA DATE: 8/22/2022

Approved

SPECIFIC AGENDA WORDING:

Consideration of Ratification of Beneficiary Agreement Between Johnson County and Johnson County Heritage Foundation, Inc. dba Chisholm Trail Outdoor Museum for the Distribution of ARPA Funds

PERSON(S) TO PRESENT ITEM:

SUPPORT MATERIAL: (Must enclose supporting documentation)

TIME: 2 minutes
(Anticipated number of minutes needed to discuss item)

ACTION ITEM: ✓
WORKSHOP:
CONSENT:
EXECUTIVE:

STAFF NOTICE:

COUNTY ATTORNEY:

IT DEPARTMENT:

AUDITOR:

PURCHASING DEPARTMENT:

PERSONNEL:

PUBLIC WORKS:

BUDGET COORDINATOR:

OTHER:

This Section to be completed by County Judge's Office

ASSIGNED AGENDA DATE: _____

REQUEST RECEIVED BY COUNTY JUDGE'S OFFICE:

COURT MEMBER APPROVAL:

DATE:

BENEFICIARY AGREEMENT BETWEEN JOHNSON COUNTY AND Johnson County Heritage Foundation, Inc. dba Chisholm Trail Outdoor Museum FOR THE DISTRIBUTION OF ARPA FUNDS

THIS AGREEMENT made, entered into and executed by and between Johnson County, Texas, a political subdivision of the State of Texas, referred to as "County" and the **Johnson County Heritage Foundation, Inc. dba Chisholm Trail Outdoor Museum, referred to as "Foundation"**, a nonprofit organizations in Johnson County, Texas.

WITNESSETH:

WHEREAS, on March 11, 2021, the American Rescue Plan Act (H.R. 1319), § 4001, ("ARPA") was signed into law providing federal funding relief for American workers, families, industries, and state and local governments;

WHEREAS, on May 10, 2021, the United State Department of Treasury released an interim final guide on allowed uses of funds and allocated \$350 billion for state, local, territorial, and Tribal governments from the American Rescue Plan Act Fund;

WHEREAS, Johnson County was allocated \$34,150,391 in ARPA funds, and received half of this amount in 2021 and the other half in 2022;

WHEREAS, the **"Foundation"** and its employees have been and continue to be on the front line of the Covid-19 pandemic. The **"Foundation"** has experienced a **loss of income/sponsorships, cancellation of schools, field trips, weddings, major events and corporate meetings/parties.** as specifically described in the memorandum provided herein as Exhibit "A";

WHEREAS, the **"Foundation"** was not a recipient of ARPA funds **for the construction of permanent restrooms** Specifically, the **"Foundation"** plans **for the construction of permanent restrooms** in Johnson County by utilizing ARPA funding **for the construction of permanent restrooms at Johnson County Heritage Foundation, Inc. dba Chisholm Trail Outdoor Museum.**

WHEREAS, The **"Foundation"** is a 501(c)(3) nonprofit organization, and is able to provide documentation as provided by the United States Internal Revenue Services; and

WHEREAS, the County has determined the **"Foundation"** is an appropriate beneficiary to receive a grant of ARPA funds.

NOW, THEREFORE, County and the **"Foundation"** in consideration of these mutual covenants and agreements, agree as follows:

1. The purpose of this agreement is to enable County to provide a portion of its ARPA funding to the **"Foundation"** as a beneficiary to enable the **"Foundation"** to **construct**

permanent restrooms. This agreement is not intended to provide ARPA funding for any purposes that are not allowable under Texas law.

2. The “Foundation” agrees that all funds received from County pursuant to this agreement shall be used for the purposes stated in paragraph 1.

3. The County agrees to provide the “Foundation” with \$48,000. It is the intent of the parties that these funds will be used within one year from the effective date of this agreement. If any portion of the funds have not been used within one year from the effective date, the “Foundation” will return the unused funds to County unless the “Foundation” requests and receives an extension of time. One Hundred (100%) of the funds will be provided to the “Foundation” within two weeks after approval of this agreement by the parties.

4. The amount provided pursuant to this agreement does not obligate County to provide additional funds to the “Foundation” for these or any other purposes in the future.

5. In order to ensure compliance with the existing ARPA and SLFRF (Coronavirus State and Local Fiscal Recovery Funds program) guidelines set forth by the US Treasury, while also ensuring that all expenditures within the scope of this Agreement adhere to future guidelines that may be established by the US Treasury during the term of this Agreement, the “Foundation” shall provide any additional documentation to support such expenditures requested by the Johnson County Auditor upon request.

6. The “Foundation” shall provide to the County monthly progress reports documenting the project progress. The “Foundation” provide to the County Auditor any invoices for work performed, goods and services, copies of cleared checks for payment of invoices, photographs, plans, designs, or any other documentation as deemed necessary by the County Auditor to show the projects progress. The “Foundation” shall provide the requested documentation on or before the last business day of each successive month after the effective date of this agreement. The County may request additional information from the “Foundation” as needed, to meet any additional guidelines regarding the use of ARPA funds that may be established by the US Treasury.

7. The “Foundation” shall comply with all federal, state, and local laws and all requirements and published guidance set forth regarding the usage of any and all monies appropriated under the ARPA. The parties agree that the County reserves the right to hire or consult with a 3rd Party for compliance with all state, federal, and local laws regarding the usage of ARPA funds. The “Foundation” agrees to cooperate with any request for information, documentation, or other necessary actions to ensure ARPA compliance from either Johnson County, its contractors, or employees.

8. The “Foundation” shall maintain records, books, documents, and other materials relevant to its performance under this Agreement. These records shall be subject to inspection, review, and audit by the County or its designees, and the US Treasury for five (5) years following termination of this Agreement. If it is determined during the course of the audit that the

“Foundation” was reimbursed for unallowable costs under this Agreement, the **“Foundation”** agrees to promptly reimburse the County for such payments upon request

9. The **“Foundation”** agrees to comply with any reporting obligations established by Treasury as they relate to this grant.

10. If the **“Foundation”** uses any portion of the funds provided under this agreement for any purposes not directly related to the intended purpose of this agreement or uses the funds for a purpose not allowed by Texas law, County shall have the right to require a return of all or any portion of the funds so provided. If the **“Foundation”** fails to provide any report required by this agreement or fails to provide any other documents requested by a Johnson County official pursuant to this agreement, County shall have the right to require a return of all or any portion of the funds so provided.

11. At no times while operating under this Agreement will any officers, employees, or volunteers of either entity be considered employees or agents of the other entity.

12. It is expressly understood and agreed that no provision of this agreement is in any way intended to constitute a waiver by either party of any immunity from suit or liability that the parties or any of their officers and employees may have by operation of law.

13. This agreement shall be construed to effectuate the purpose stated in Section I. If any provision of this agreement is declared unconstitutional, or the applicability to any persons or circumstances is held invalid, the constitutionality of the remainder of the agreement and applicability to the other persons and circumstances shall not be affected.

14. The parties to this agreement do not intend to create a third-party beneficiary or for any third party to obtain a right by virtue of this Agreement. Neither this agreement, nor any term or provision hereof, nor any inclusion by reference, shall be construed as being for the benefit of any party not in signatory hereto.

15. The parties shall observe and comply with all applicable federal, state, and local laws, rules, ordinances, and regulations in any manner affecting this agreement.

16. It is mutually understood that nothing in this Agreement is intended or shall be construed in any way creating or establishing the relationship of partners between the parties hereto, or as constituting either party as an agent or representative of the other party for any purpose or in any manner whatsoever.

17. INDEMNIFICATION: THE PROVISIONS OF THIS ARTICLE SHALL SURVIVE THE TERMINATION OF THIS AMENDED AGREEMENT HOWEVER CAUSED, AND NO PAYMENT, PARTIAL PAYMENT, OR ISSUANCE OF EITHER A CERTIFICATE OF SUBSTANTIAL COMPLETION OR FINAL SYSTEM ACCEPTANCE IN WHOLE OR IN PART SHALL WAIVE OR RELEASE ANY OF THE PROVISIONS OF THIS ARTICLE.

THE "Foundation" SHALL INDEMNIFY, DEFEND, AND HOLD HARMLESS THE COUNTY ITS OFFICERS, DIRECTORS, AGENTS, EMPLOYEES, SUCCESSORS AND ASSIGNS ("INDEMNIFIED PARTIES") FROM AND AGAINST ALL CLAIMS AND LIABILITY DUE TO THE ACTIVITIES OF CONTRACTOR, OR ANOTHER ENTITY OVER WHICH "Foundation" EXERCISES CONTROL, PERFORMED UNDER THIS AMENDED AGREEMENT AND WHICH RESULT FROM ANY NEGLIGENT ACT, ERROR, OR OMISSION; INTENTIONAL TORT; INTELLECTUAL PROPERTY INFRINGEMENT; OR FAILURE TO PAY A SUB "Foundation" OR SUPPLIER; COMMITTED BY "Foundation" OR ANOTHER ENTITY OVER WHICH "Foundation" EXERCISES CONTROL.

THE "Foundation" SHALL ALSO INDEMNIFY, DEFEND, AND HOLD HARMLESS THE COUNTY FROM AND AGAINST ANY AND ALL EXPENSES, INCLUDING REASONABLE ATTORNEY'S FEES WHICH MIGHT BE INCURRED BY THE COUNTY, IN LITIGATION OR OTHERWISE RESISTING SAID CLAIMS OR LIABILITIES WHICH MIGHT BE IMPOSED ON THE COUNTY AS THE RESULT OF SUCH ACTIVITIES BY "Foundation" OR ANOTHER ENTITY OVER WHICH THE "Foundation" EXERCISES CONTROL.

THE "Foundation" SHALL INDEMNIFY, DEFEND, AND HOLD THE COUNTY HARMLESS FROM ANY AND ALL LIABILITY, EXPENSE, JUDGMENT, SUIT, CAUSE OF ACTION, OR DEMAND FOR PERSONAL INJURY, DEATH, OR DIRECT DAMAGE TO TANGIBLE PROPERTY WHICH MAY ACCRUE AGAINST THE COUNTY TO THE EXTENT IT IS CAUSED BY THE NEGLIGENCE OF "Foundation" OR ANOTHER ENTITY OVER WHICH "Foundation" EXERCISES CONTROL, WHILE PERFORMING SERVICES UNDER THIS AMENDED AGREEMENT. COUNTY WILL GIVE THE "Foundation" PROMPT, WRITTEN NOTICE OF ANY SUCH CLAIM OR SUIT. COUNTY SHALL COOPERATE WITH "Foundation" IN ITS DEFENSE OR SETTLEMENT OF SUCH CLAIM OR SUIT.

THE "Foundation" SHALL INDEMNIFY, DEFEND, AND HOLD HARMLESS THE COUNTY FROM AND ALL THIRD PARTY CLAIMS, DAMAGES, LIABILITIES AND EXPENSES (INCLUDING, WITHOUT LIMITATION ATTORNEY'S FEES) FOR INURY TO OR DEATH OF ANY PERSON OR FOR DAMAGE TO OR DESTRUCTION OF ANY THIRD PARTY PROPERTY RESULTING DIRECTLY FROM ANY AND ALL ACTS OR OMISSIONS OF "Foundation" AND ANY SUB "Foundation" OR ANYONE EMPLOYED BY OR AFFILIATED WITH ANY OF THEM OR ANYONE FOR WHOSE ACTS ANY OF THEM MAY BE LIABLE, PROVIDED THAT, FOR PURPOSES OF THIS PARAGRAPH, THE TERM "THIRD PARTY" SHALL INCLUDE CONTRACTOR'S OFFICERS, AGENTS, SUBCONTRACTORS, AND EMPLOYEES.

THE "Foundation" SHALL ALSO INDEMNIFY, DEFEND, AND HOLD HARMLESS THE COUNTY FROM ALL DAMAGES, EXPENSES, SUITS, ACTIONS AND CLAIMS OF EVERY KIND AND CHARACTER WHATSOEVER WHICH THE COUNTY MAY SUFFER DIRECTLY DUE TO ANY BANKRUPTCY, STATE OR FEDERAL TAX LEVIES OR LIENS, OR OTHER SIMILAR LEGAL PROCEEDINGS AFFECTING THE

CONTRACTOR, IN WHICH THE COUNTY MAY BECOME IN ANY WAY INVOLVED, WHETHER RELATED TO THE AMENDED AGREEMENT AND/OR CONTRACTOR'S PERFORMANCE OR NON-PERFORMANCE UNDER THIS AMENDED AGREEMENT.

IF A RESTRAINING ORDER OR TEMPORARY INJUNCTION IS GRANTED DUE TO ANY ACT, ERROR, OR OMISSION COMMITTED BY THE "Foundation" OR ANOTHER ENTITY OVER WHICH THE "Foundation" EXERCISES CONTROL "Foundation" SHALL MAKE EVERY EFFORT, INCLUDING BUT NOT LIMITED TO SECURING A SATISFACTORY BOND, TO OBTAIN THE SUSPENSION OF ANY SUCH RESTRAINING ORDER OR TEMPORARY INJUNCTION. COUNTY RESERVES THE RIGHT, AT ITS OWN EXPENSE, TO BE INDEPENDENTLY REPRESENTED BY COUNSEL OF ITS OWN CHOICE IN CONNECTION WITH ANY SUCH SUIT OR PROCEEDING.

ALL INDEMNITY ITEMS ARE SUBJECT TO THE TEXAS TORT CLAIMS ACT AND TEXAS CONSTITUTION.

18. The exclusive venue for any action under or related to this Beneficiary Agreement is in state district courts in Johnson County, Texas or the Federal District Courts in Dallas, Texas.

19. This instrument constitutes the entire agreement between the parties and supersedes any and all agreements previously entered into by these same parties pertaining to the activities covered by this agreement

EFFECTIVE DATE: The 5th day of August, 2022.

Johnson County

By: _____

Roger Harmon
Johnson County Judge

ATTEST:

By: _____

Becky Ivey
Johnson County Clerk



THE Johnson County Heritage Foundation, Inc. dba Chisholm Trail Outdoor Museum

By: _____

David Murdoch
Chief Executive Officer