

REQUEST FOR AGENDA PLACEMENT FORM

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

SUBMITTED BY: CJO

TODAY'S DATE: 8/25/22

DEPARTMENT: CJO

SIGNATURE OF DEPARTMENT HEAD: _____

REQUESTED AGENDA DATE: 9/12/2022

SPECIFIC AGENDA WORDING:

Consideration of Beneficiary Agreement Between Johnson County and Center for ASD for the Distribution of ARPA Funds

COMMISSIONERS COURT

SEP 12 2022

Approved

PERSON(S) TO PRESENT ITEM:

Judge Harmon

SUPPORT MATERIAL: (Must enclose supporting documentation)

TIME: 1 minute

(Anticipated number of minutes needed to discuss item)

ACTION ITEM: ✓

WORKSHOP:

CONSENT:

EXECUTIVE:

STAFF NOTICE:

COUNTY ATTORNEY: ✓

AUDITOR: ✓

PERSONNEL:

BUDGET COORDINATOR: ✓

IT DEPARTMENT:

PURCHASING DEPARTMENT: ✓

PUBLIC WORKS:

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 CENTER FOR
ASD 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 Center For ASD, 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 Center for ASD and its employees have been and continue to be on the front line of the Covid-19 pandemic. The Center for ASD has experienced a negative impact due to COVID-19 as specifically described in the memorandum provided herein as Exhibit "A";

WHEREAS, the Center for ASD was not a recipient of ARPA funds. Specifically, the Center for ASD plans to fund scholarships for Individuals with Autism and other special needs at the Center for ASD, which is located in Johnson County;

WHEREAS, The Center for ASD 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 Center for ASD is an appropriate beneficiary to receive a grant of ARPA funds.

NOW, THEREFORE, County and the Center for ASD 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 Center for ASD as a beneficiary to enable the Center for ASD to provide scholarships to individuals affected by Autism and other special needs. This agreement is not intended to provide ARPA funding for any purposes that are not allowable under Texas law.

2. The Center for ASD 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 Center for ASD with \$212,600. It is the intent of the parties that these funds will be used within two years from the effective date of this agreement. If any portion of the funds have not been used within two years from the effective date, the Center for ASD will return the unused funds to County unless the Center for ASD requests and receives an extension of time. One Hundred (100%) of the funds will be provided to the Center for ASD 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 Center for ASD 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 Center for ASD shall provide any additional documentation to support such expenditures requested by the Johnson County Auditor upon request.

6. The Center for ASD shall provide to the County quarterly progress reports documenting the project progress. The Center for ASD shall 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 Center for ASD 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 Center for ASD, as needed, to meet any additional guidelines regarding the use of ARPA funds that may be established by the US Treasury.

7. The Center for ASD 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 Center for ASD 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 Center for ASD 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 Center for ASD was reimbursed for unallowable costs under this Agreement, the Center for ASD agrees to promptly reimburse the County for such payments upon request

9. The Center for ASD agrees to comply with any reporting obligations established by Treasury as they relate to this grant.

10. If the Center for ASD 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 Center for ASD 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 CENTER FOR ASD 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 CENTER FOR ASD 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 CENTER FOR ASD OR SUPPLIER; COMMITTED BY CENTER FOR ASD OR ANOTHER ENTITY OVER WHICH CENTER FOR ASD EXERCISES CONTROL.

THE CENTER FOR ASD 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 CENTER FOR ASD OR ANOTHER ENTITY OVER WHICH THE CENTER FOR ASD EXERCISES CONTROL.

THE CENTER FOR ASD 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 CENTER FOR ASD OR ANOTHER ENTITY OVER WHICH CENTER FOR ASD EXERCISES CONTROL, WHILE PERFORMING SERVICES UNDER THIS AMENDED AGREEMENT. COUNTY WILL GIVE THE CENTER FOR ASD PROMPT, WRITTEN NOTICE OF ANY SUCH CLAIM OR SUIT. COUNTY SHALL COOPERATE WITH CENTER FOR ASD IN ITS DEFENSE OR SETTLEMENT OF SUCH CLAIM OR SUIT.

THE CENTER FOR ASD 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 INJURY 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 CENTER FOR ASD AND ANY SUB CENTER FOR ASD 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 CENTER FOR ASD 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.

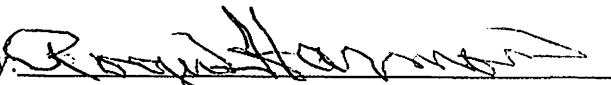
IF A RESTRAINING ORDER OR TEMPORARY INJUNCTION IS GRANTED DUE TO ANY ACT, ERROR, OR OMISSION COMMITTED BY THE CENTER FOR ASD OR ANOTHER ENTITY OVER WHICH THE CENTER FOR ASD EXERCISES CONTROL, CENTER FOR ASD SHALL MAKE EVERY EFFORT, INCLUDING BUT NOT LIMITED TO SECURING A SATISFACTORY BOND, TO OBTAIN 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.

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 12th day of Sept, 2022.

Johnson County

By: 
Roger Harmon
Johnson County Judge

ATTEST:

By: 
Becky Ivey
Johnson County Clerk



THE CENTER FOR ASD

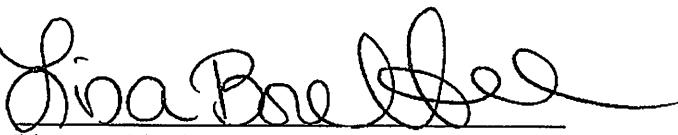
By: 
Lisa Boultinghouse
Chief Executive Officer

Exhibit A

American Rescue Plan Act: Center for ASD

Center for ASD, a 501(c)(3), is honored to be selected as a beneficiary of American Rescue Plan funds in Johnson County to assist its multi-use special needs center in recovering from multiple negative impacts of the COVID pandemic. The center is located in Burleson, Texas, and currently has a growing roster of 155 families.

Center for ASD (CASD) hosts a variety of therapeutic and quality of life programs for special needs participants and their families including support groups, educational classes, art, music, fitness, respite support, and social activities. Participants range in age from 2 to 62. CASD is experiencing a rapid influx of new families seeking human connection, caretaker respite, and activities for their special needs loved ones and themselves resulting from being homebound and isolated during the long COVID closure.

Direct financial effects resulting from the pandemic:

- In fiscal year 2020, CASD canceled multiple community fundraisers that had profited over \$35,000 in the prior year. Smaller fundraising efforts also ceased and individual donor contributions decreased dramatically. The ability to raise scholarship funds designated specifically for participants with financial needs came to a halt. The center closed its doors during COVID shutdown.
- When the center reopened, it was only for part-time hours and at limited participant capacity for 12 months. During this time, CASD lost program revenue and its ability to bring in new participants or recruit staff.
- Near the beginning of the pandemic, CASD had recently commenced a sustainable giving program made up of donors that pledged to be repeat donors after touring the facility and viewing its programs. Those tours were halted as a result of ongoing pandemic concerns and fears.

Other pandemic impacts:

- CASD currently has 17 employees. As of this date, 13 have been infected. Staff and volunteers have required many hours off to recuperate from the effects of the virus, and the center has had multiple week-long shutdowns, as needed.
- CASD had previously thrived on building a large volunteer roster. As a result of the pandemic, many of those volunteers dropped off and have been slow in returning.
- As CASD reopened full time, many new and current families have reached out to the center for support of their loved ones and themselves. CASD is in need of increased staff, increased space, and increased fundraising efforts. This has been made difficult by the current pandemic staffing and fundraising climate.
- More and more participants are requiring financial assistance via scholarships to supplement their participation in center programs. Many of these participants and families themselves are being impacted financially by the ongoing pandemic and have struggled to stay afloat.
- Many of the center's participants are aged 18 and older. They support themselves via Social Security Income. As housing and food costs have increased during the pandemic, these participants find themselves with larger support needs.

Funds received via ARPA will be used to provide scholarships to special needs participants aged 18 and older providing them access to center programs and support. Use of funds will be measured in "hours of service" provided to these individuals. This will allow for them and their families to recuperate mentally, emotionally, and financially from pandemic effects. This will also support CASD in preparing for the influx of new families, focusing on additional capacity building fundraising needs, maintaining quality of programs, and rebuilding the volunteer roster. Center for ASD is grateful to Johnson County and ARPA for this timely and tremendous opportunity to serve area special needs families in their greatest time of need.