

REQUEST FOR AGENDA PLACEMENT FORM

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

SUBMITTED BY: CJO TODAY'S DATE: 9/2/22

DEPARTMENT: CJO

SIGNATURE OF DEPARTMENT HEAD: _____

REQUESTED AGENDA DATE: 9/12/2022

SPECIFIC AGENDA WORDING:

Consideration of Beneficiary Agreement Between Johnson County and Open Door Food Pantry 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 OPEN DOOR
FOOD PANTRY 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 Open Door Food Pantry ("ODFP"), a nonprofit organization 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, ODFP and its employees have been and continue to be on the front line of the Covid-19 pandemic. ODFP has experienced an inability to answer the need for food for those in need in the community as fully as possible due to a lack of food storage space as specifically described in the memorandum provided herein as Exhibit "A";

WHEREAS, ODFP was not a direct recipient of ARPA funds for the construction of a new food storage facility; however, ODFP plans to construct a new food storage facility in Johnson County by utilizing ARPA funding as more fully described in Exhibit "A".

WHEREAS, ODFP is a 501(c)(3) nonprofit organization, and is able to provide documentation as provided by the United States Internal Revenue Service; and

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

NOW, THEREFORE, County and ODFP, 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 ODFP as a beneficiary to enable ODFP to construct a new food storage facility in Johnson County by utilizing ARPA funding as more fully described in Exhibit "A". This agreement is not intended to provide ARPA funding for any purposes that are not allowable under Texas law.

2. ODFP 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 ODFP with (\$ 790,000.00). 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, ODFP will return the unused funds to County unless ODFP requests and receives an extension of time. Thirty percent (30%) of the funds will be provided to ODFP within two weeks after approval of this agreement by the parties. Thirty percent (30%) of the funds will be provided to ODFP at Fifty percent (50%) completion. Thirty percent (30%) of the funds will be provided to ODFP at Seventy Five percent (75%) completion. Ten percent (10%) shall be retained by the County until completion of the project. Upon project completion and submission of final progress report the Johnson County Auditor may pay the remaining 10% of the allocated funds. County reserves the right to retain all 10% of the final payment until final approval is given.

4. The amount provided pursuant to this agreement does not obligate County to provide additional funds to ODFP 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, ODFP shall provide any additional documentation to support such expenditures requested by the Johnson County Auditor upon request.

6. ODFP shall provide to County monthly progress reports documenting the project progress. ODFP 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. ODFP shall provide the requested documentation on or before the last business day of each successive month after the effective date of this agreement. County may request additional information from ODFP, as needed, to meet any additional guidelines regarding the use of ARPA funds that may be established by the US Treasury.

7. ODFP 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 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. ODFP agrees to cooperate with any request for information, documentation, or other necessary actions to ensure ARPA compliance from either County, its contractors, or employees.

8. ODFP 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 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 ODFP was reimbursed for

unallowable costs under this Agreement, ODFP agrees to promptly reimburse County for such payments upon request

9. ODFP agrees to comply with any reporting obligations established by the US Treasury as they relate to this grant.

10. If ODFP 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, upon learning of same, ODFP shall immediately reinstate such portion of the funds. If ODFP fails to reinstate such portion of the funds within five (5) business days of receiving notice from County, County shall have the right to require a return of all or any portion of the funds so provided. If ODFP 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, ODFP shall have five (5) business days from written notice by County to cure such deficiency after which 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 ODFP or County 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 1. 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 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.

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

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

ODFP SHALL INDEMNIFY, DEFEND, AND HOLD 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 COUNTY TO THE EXTENT IT IS CAUSED BY THE NEGLIGENCE OF ODFP OR ANOTHER ENTITY OVER WHICH ODFP EXERCISES CONTROL, WHILE PERFORMING SERVICES UNDER THIS AGREEMENT. COUNTY WILL GIVE ODFP PROMPT, WRITTEN NOTICE OF ANY SUCH CLAIM OR SUIT. COUNTY SHALL COOPERATE WITH ODFP IN ITS DEFENSE OR SETTLEMENT OF SUCH CLAIM OR SUIT.

ODFP SHALL INDEMNIFY, DEFEND, AND HOLD HARMLESS 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 ODFP AND ANY SUBCONTRACTOR 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.

ODFP SHALL ALSO INDEMNIFY, DEFEND, AND HOLD HARMLESS 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 ODFP, IN WHICH COUNTY MAY BECOME IN ANY WAY INVOLVED, WHETHER RELATED TO THE

AGREEMENT AND/OR ODFP'S PERFORMANCE OR NON-PERFORMANCE UNDER THIS AGREEMENT.

IF A RESTRAINING ORDER OR TEMPORARY INJUNCTION IS GRANTED DUE TO ANY ACT, ERROR, OR OMISSION COMMITTED BY ODFP OR ANOTHER ENTITY OVER WHICH ODFP EXERCISES CONTROL, ODFP 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 Tarrant County, Texas.

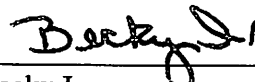
19. This instrument constitutes the entire agreement between the parties and supersedes any and all agreements previously entered into by these same parties pertaining to the activities covered by this agreement

EFFECTIVE DATE: The 12th day of September, 2022.

Johnson County

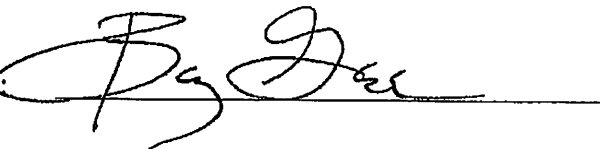
By: 
Roger Harmon
Johnson County Judge

ATTEST:

By: 
Becky Ivey
Johnson County Clerk

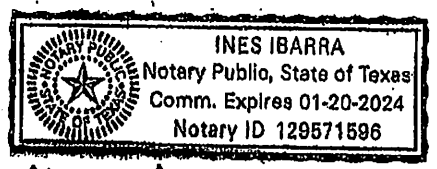


Open Door Food Pantry

By: 

Printed Name: Barry Gee

Title: CHIEF FINANCIAL OFFICER



[Handwritten Signature] 1/1/22



OPENDOORFOODBANK

817.295.7671 | PO BOX 3775 BURLESON, TEXAS 76097

OPENDOOR FOODBANK IS A 501(C)3 NONPROFIT PROVIDING FOOD AND HOPE TO OUR COMMUNITY

OpenDoor Food Pantry provides food and hope to families in need through our twice-monthly outreach. We provide both perishable and non-perishable food items to anyone in need of help no strings attached. There is no regard to race, religion, age, social or financial status. We are here to help because it is our privilege to give. We treat every person who comes through our food pantry with dignity, never shaming them. By acknowledging their value, OpenDoor Food Pantry has built an atmosphere of trust with the communities we serve. People know they are loved and their needs will be met when they enter our gates. Our pantry has become a staple for them because of this relationship. We have operated for over twenty-five years in Johnson County and give away over ten million pounds of food each year.

During Covid it was increasing difficult to acquire food and supplies, the amount of people who needed food doubled and many of our teams were greatly impacted by illness. During that time period, we increased our donor/partner base to meet the increased need. That need has not abated. With the fallout of Covid, supply chain issues, business closures, inflation and the Covid-induced economic recession, those we serve need the OpenDoor Food Pantry even more. In fact, we've seen a large increase in numbers—people tell us they are having to choose between food and electricity, or between food and gasoline to go to work. Many parents admit to going hungry to feed their children or elderly parents.

The ARPA funding will allow us to double our storage capacity by building an additional building with freezer and cold storage. This is crucial to getting meat, dairy and produce into the hands of people who need it most. These items are in highest demand as they are quickly becoming luxuries due to their price and limited availability in stores. The ARPA funding will allow us to run two lines of cars instead of one to handle the additional amount of people. We run a very efficient operation. However, the sharp increase in need has caused many to wait in line an extra hour or more. In the Texas heat with gas prices high, this is counterproductive for those we serve. Getting them through the process faster will save them money, time and other resources. They are the "why" of the OpenDoor Food Pantry. Anything we can do to serve our neighbors better is a win in our eyes.

Barry Gee
CFO Open Door Food Pantry

8-3-22