

**AGREEMENT
BETWEEN
BALDWIN COUNTY, ALABAMA
AND
THE BALDWIN COUNTY EASTERN SHORE HEALTH CARE AUTHORITY
FOR

American Rescue Plan Act Revenue Replacement Funding
to be Used in Support of Infirmity Health Systems**

THIS AGREEMENT (“Agreement”) entered this ____ day of _____, 2023, by and between Baldwin County, Alabama (the “County”) and the Baldwin County Eastern Shore Health Care Authority (the “Authority”), (collectively, the “Parties”), duly formed as a health care authority in accordance with the provisions of Articles 11 and 11A of Chapter 21, Title 22, Code of Alabama 1975 (sections 22-21-310 through 22-21-359).

WHEREAS, the County has received a Coronavirus State and Local Fiscal Recovery Fund (“SLFRF”) award under the American Rescue Plan Act (“ARPA funds”) from the U.S. Department of the Treasury (“Treasury”) on May 18, 2021; and

WHEREAS, in accordance with the final rule issued by Treasury on January 6, 2022, the County has duly elected to take the standard allowance of revenue replacement funds equal to \$10,000,000 of its ARPA funds (“ARPA revenue replacement funds”); and

WHEREAS, ARPA revenue replacement funds may be used for the provision of government services; and

WHEREAS, pursuant to Ala. Code 1975, § 22-21-336(2), the County is expressly authorized to play a role in providing health care services by providing public funds to health care authorities to accomplish the purposes for which the authorities are organized; and

WHEREAS, the purposes and powers of a duly organized health care authority include the power to “acquire, construct, reconstruct, equip, enlarge, expand, alter, repair, improve, maintain, equip, furnish and operate health care facilities...” Section 22-21-318(a)(5), and

WHEREAS, the County has resolved to allocate up to \$317,400 of its ARPA revenue replacement funds to cover part or all of the eligible costs of a crisis alert system to the Authority for use in health care facilities located within the geographical boundaries of the County.

NOW, THEREFORE, it is agreed between the Parties that:

I. PROJECT PURPOSE AND DESCRIPTION

The purpose of the project is to provide funding to the Authority to be used for the acquisition of a crisis alert system for use in health care facilities located within the geographical boundaries of the County to facilitate the safe and effective delivery healthcare services.

II. TERMS AND CONDITIONS OF AGREEMENT

The availability of funding pursuant to this Agreement shall be contingent upon a formal determination via a resolution adopted by the Authority's board finding:

- A. That it is within the Authority's lawful power to accept said funding and to expend it for the purposes set forth in this Agreement; and
- B. That the proposed expenditure of the funds available pursuant to this Agreement to cover the cost of a crisis alert system to be used by healthcare facilities within the County is necessary and reasonable, i.e., that the cost, in its nature and amount, does not exceed that which would be incurred by a prudent person under the circumstances prevailing at the time the decision to incur the expenditure was made.

C. Period of Performance

The period of performance for this Agreement shall begin on the date of the execution of this Agreement by both parties, and is expected to end on or before December 31, 2024. The terms of this Agreement and the provisions herein shall be extended to cover any additional time period during which the contractor remains responsible for carrying out the approved activities; provided, however, that the period of performance for all activities related to this subaward must conform with the period of performance for the County's ARPA SLFRF award, as outlined by Treasury including, but not limited to:

- 1. All funds obligated by December 31, 2024;
- 2. All funds spent by December 31, 2026;
- 3. Project costs incurred prior to March 3, 2021, are ineligible;
- 4. For projects started prior to March 3, 2021, project costs are eligible if costs were incurred after March 3, 2021.

D. Staffing

The Authority shall ensure adequate and appropriate staffing is allocated to the performance activities necessary for the completion of the project.

E. County Oversight of Project Performance

At a minimum, project oversight will include the following:

- 1. The Authority must provide notice to the County as soon as practical of all issues or potential factors expected to inhibit the Authority from carrying out the project, as well as a plan to mitigate any concerns.
- 2. At least once each quarter, beginning with the quarter ending June 30, 2023 and continuing until the project is complete, the Authority will provide a written report to

the County Project Monitor describing the status of the project and milestones that have been achieved.

F. Project and Expenditure Reports

The Authority shall provide project and expenditure information as requested by the County in support of the County’s obligation to provide a Project and Expenditure Report, including any programmatic information required under the Treasury’s Compliance and Reporting Guidelines.

III. TOTAL AMOUNT OF ARPA REVENUE REPLACEMENT FUNDS OBLIGATED

The maximum total amount of ARPA revenue replacement funds obligated to the Authority pursuant to this Agreement is \$317,400. No other ARPA or other federal funds are currently obligated or committed to the Authority by the County.

IV. TERMS OF PAYMENT AND PROCEDURES

- A. The total amount to be paid by the County under this Agreement shall not exceed \$317,400. It is expressly understood that the Authority is responsible for any remaining costs associated with this project.
- B. The County will reimburse the Authority with funds available under this Agreement upon presentation of documentation evidencing amounts expended for goods and services reasonably necessary for the implementation of the project. The County reserves the right to liquidate funds available under this Agreement for any costs incurred by the County on behalf of the Authority.
- C. Payment of funds available under this Agreement is further contingent upon substantial compliance with the terms and conditions of this Agreement, including the competitive procurement requirements set forth herein.

V. NOTICES

Notices required by this Agreement shall be in writing and delivered via certified mail, postage prepaid. Any notice delivered or sent in accordance with this section shall be effective on the date of delivery. All notices and other written communications under this Agreement shall be addressed to the individuals in the capacities indicated below, unless otherwise modified by subsequent written amendment to this Agreement. Communication and details concerning this Agreement shall be directed to the following Agreement representatives:

Baldwin County Commission Attn: Katrina Taylor Grants Coordinator and ARPA Funds Project Monitor P O Box 1389 Bay Minette, AL 36507	The Baldwin County Eastern Shore Health Care Authority Attn: Tommie Conaway, Secretary Post Office Drawer 929 Fairhope, Alabama 36532
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VI. GENERAL CONDITIONS**A. General Compliance**

The parties agree to comply with any applicable federal, state, and local laws and policies and procedures. It is understood that this project is being funded, at least in part, with American Rescue Plan Act (ARPA) revenue replacement funds granted to the County. As such, the parties agree to comply with applicable requirements of section 603 of the American Rescue Plan Act, Pub. L. No. 117-2 (March 11, 2021) (the "Act"), regulations adopted by Treasury pursuant to section 603(f) of the Act, codified as 31 C.F.R. Part 35, and guidance issued by Treasury regarding the foregoing, including but not limited to the terms and conditions set forth in Attachment A to this Agreement. By signing this Agreement, the Authority certifies that it is eligible to receive federal funds and it is not debarred or suspended from doing so.

B. Immigration Law

Chapter 13 of Title 31, Code of Alabama 1975, imposes conditions on the award of County contracts. The Authority agrees to fully comply with any applicable provisions of the Immigration Reform and Control Act of 1986, as amended by the Immigration Act of 1990, and the Beason-Hammon Alabama Taxpayer and Citizen Protection Act.

C. Independent Contractor

Nothing contained in this Agreement is intended to or shall be construed in any manner as to create or establish the relationship of employer/employee between the Parties. The Authority shall at all times remain an independent contractor with respect to the services to be performed under this Agreement.

D. Prohibition on the Authority Acting as an Agent of the Commission

This Agreement and the relationship created hereby does not in any manner create, imply, or otherwise vest any authority in the Authority to act on behalf of the Commission. Furthermore, this Agreement hereby expressly forbids the creation of an agency or any action that would create or imply that the Authority is an agent of the Commission.

E. Hold Harmless

The Authority shall hold harmless, defend, and indemnify the County from any and all claims, actions, suits, charges, and judgments whatsoever that arise out of its performance or nonperformance of the project activities or subject matter called for in this Agreement.

F. Liability

The Authority agrees to repay to County any funds provided by the County under this Agreement, plus interest, that the County determines have been expended in violation of this Agreement and/or any federal, state, or local laws or policies governing the use of

ARPA funds. This provision shall be in addition to and shall not be deemed to waive any rights or remedies of the County under the law.

G. Amendments

1. The County or the Authority may amend this Agreement at any time provided that such amendments make specific reference to this Agreement, are executed in writing, are signed by a duly authorized representative of each organization, and are approved by the County's governing body. Such amendments shall not invalidate this Agreement, nor relieve or release either the County or the Authority from their respective obligations under this Agreement.
2. The County may, in its discretion, amend this Agreement to conform with federal, state, or local governmental guidelines, policies, and available funding amounts, or for other reasons. Such modifications will be incorporated only by written amendment signed by both County and the Authority.

H. Suspension or Termination

1. The County may suspend or terminate this Agreement if the Authority materially fails to comply with any terms of the Agreement. Such material failures include (but are not limited to) the following:
 - a. Failure to comply with any of the rules, regulations, or provisions referred to herein, or such statutes, regulations, and ARPA guidelines, policies, or directives as are applicable at any time;
 - b. Failure, for any reason, of the Authority to fulfill in a timely and proper manner its obligations under this Agreement;
 - c. Ineffective or improper use of funds provided under this Agreement; or
 - d. Submission by the Authority of reports or documentation that are incorrect in any material respect.

In the event the Agreement is terminated pursuant to this paragraph, the Authority shall reimburse the County for any amounts already paid pursuant to this Agreement.

2. This Agreement may also be terminated upon mutual agreement of the Parties, including any related conditions.
3. This Agreement may also be terminated by either the County or the Authority, in whole or in part, including for convenience, by setting forth the reasons for such termination, the effective date, and, in the case of partial termination, the portion to be terminated. However, in the case of partial termination, if the County determines that the remaining portion of the award will not accomplish the purpose for which the award was made, the County may terminate the award in its entirety and the Authority shall reimburse the County for any amounts already paid pursuant to this Agreement.

VII. LICENSURE REQUIREMENTS

The Authority certifies that it is currently in compliance and throughout the period of performance of this Agreement will remain in compliance with applicable licensure requirements. The Authority shall ensure that any contractors or subcontractors performing work on the project are in compliance with applicable licensing requirements.

VIII. EXPENDITURES

- A. The Authority certifies that funds awarded pursuant to this Agreement shall be expended only on goods and services reasonably necessary to meet the purpose and goals of the project.
- B. The Authority certifies that it will not expend any portion of the funds awarded pursuant to this Agreement on expenditures prohibited by the Final Rule, including the following:
1. Deposits into pension funds;
 2. Debt service;
 3. Replenishment of financial reserves;
 4. Expenditures for programs or activities that undermine the practices included in the Centers for Disease Control's guidelines and recommendations for stopping the spread of COVID-19; and
 5. Expenditures for programs or activities in violation of state, federal, or local laws.

IX. ADMINISTRATIVE REQUIREMENTS

A. Financial Management

The Authority agrees to undertake financial management measures necessary to separately account for expenditures of funds awarded pursuant to this Agreement.

B. Documentation and Record Keeping

1. Records to be Maintained

The Authority shall maintain all records that are pertinent to the activities to be funded under this Agreement. Such records shall include but not be limited to:

- a. Records demonstrating compliance with the terms of this Agreement;
- b. Financial records demonstrating the purpose and amount of expenditures of the funds awarded pursuant to this Agreement;
- c. Documentation demonstrating compliance with competitive procurement requirements set forth in this Agreement; and
- d. Documentation demonstrating compliance with any applicable provisions of the terms and conditions of the County's ARPA Award.

2. Retention Period

The Authority shall retain all financial records, supporting documents, and all other records pertinent to the Agreement until December 31, 2031. The retention period begins on the date of the execution of this Agreement.

3. Audits and Inspections

All records of the Authority with respect to any matters covered by this Agreement shall be made available to the County or any of its authorized representatives, at any time during normal business hours, as often as deemed necessary, to audit, examine, and make excerpts or transcripts of all relevant data. Any deficiencies noted in audit reports must be fully cleared by the Authority within thirty (30) days after receipt by the Authority. Failure of the Authority to comply with the above audit requirements will constitute a violation of this Agreement and may result in the withholding of future payments.

X. CONDUCT

A. Assignability

The Authority shall not assign or transfer any interest in this Agreement without the prior written consent of the County. Any consent to assignment shall not be considered consent to any subsequent assignment.

B. Conflict of Interest

No employee, officer, or agent of the Authority shall participate in the selection, or in the award or administration, of a contract supported by federal funds if a conflict of interest, real or apparent, would be involved.

C. Lobbying

The Authority hereby certifies that funds provided pursuant to this agreement will not be used for any direct or indirect payments for any personal service, advertisement, telegram, telephone, letter, printed or written matter, or other device intended or designed to influence in any manner a Member of Congress, a jurisdiction, or an official of any government, to favor, adopt, or oppose, by vote or otherwise, any legislation, law, ratification, policy, or appropriation, whether before or after the introduction of any bill, measure, or resolution proposing such legislation, law, ratification, policy, or appropriation.

D. Religious Activities

The Authority agrees that funds provided under this Agreement will not be utilized for inherently religious activities.

E. Employment Restrictions: Prohibited Activity

The Authority is prohibited from using funds provided herein or personnel employed in the administration of the program for the following: political activities; inherently religious activities; lobbying; political patronage; and nepotism activities.

XI. SEVERABILITY

If any provision of this Agreement is held invalid, the remainder of the Agreement shall not be affected thereby and all other parts of this Agreement shall nevertheless be in full force and effect.

XII. SECTION HEADINGS AND SUBHEADINGS

The section headings and subheadings contained in this Agreement are included for convenience only and shall not limit or otherwise affect the terms of this Agreement.

XIII. WAIVER

The County's failure to act with respect to a breach by the Authority does not waive its right to act with respect to subsequent or similar breaches. The failure of the County to exercise or enforce any right or provision shall not constitute a waiver of such right or provision.

XIV. ENTIRE AGREEMENT

This Agreement constitutes the entire agreement between the County and the Authority for the use of funds received under this Agreement and it supersedes all prior or contemporaneous communications and proposals, whether electronic, oral, or written, between the County and the Authority with respect to this Agreement.

IN WITNESS WHEREOF, the County and the Authority have indicated their acceptance of the terms of this Agreement by their signatures below on the dates indicated.

Baldwin County, Alabama

The Baldwin County Eastern Shore Health Care Authority

By: _____
Chair, Baldwin County Commission

By: _____
Emalyn Johnson, Chairman

Date: _____

Date: _____

Attest: _____
Ron Cink, Budget Director

Date: _____

ATTACHMENT A: TERMS AND CONDITIONS OF ARPA REVENUE REPLACEMENT FUNDS AWARD

The parties agree to comply with any applicable federal, state, and local laws and policies and procedures. It is understood that this project is being funded, at least in part, with American Rescue Plan Act (ARPA) revenue replacement funds granted to the County. As such, the parties agree to comply with applicable requirements of section 603 of the American Rescue Plan Act, Pub. L. No. 117-2 (March 11, 2021) (the "Act"), regulations adopted by Treasury pursuant to section 603(f) of the Act, codified as 31 C.F.R. Part 35, and guidance issued by Treasury regarding the foregoing.

Federal regulations which are applicable to this Agreement include, without limitation, the following:

1. OMB Guidelines to Agencies on Governmentwide Debarment and Suspension Non-procurement, 2 C.F.R. Part 180, including the requirement to include a term or condition in all lower tier covered transactions (contracts and subcontracts described in 2 C.F.R. Part 180, subpart B) that the award is subject to 2 C.F.R. Part 80 and Treasury's implementing regulation at 31 C.F.R. Part 19.
2. New Restrictions on Lobbying. Contractor must certify that it will not, and has not, used federal appropriated funds to any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any federal contract, grant, or any other award covered by 31 U.S.C § 1352.
3. Generally applicable federal environmental laws and regulations. Contractor must comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). All violations must be reported to the County, Treasury, and the Regional Office of the Environmental Protection Agency.
4. Generally applicable anti-discrimination laws and regulations, including protections for whistleblowers relating to the use of federal funds.
5. For contracts/subcontracts over \$100,000, work performed by mechanics and laborers is subject to the provisions of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3702 and 3704), as supplemented by 29 C.F.R. Part 5, including, specifically, safety standards, limitations on hours in a workweek and overtime for any work spent over 40 hours, and proper documentation for all employees.
 - a. A contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall not require or permit any laborer or mechanic, in any workweek in which the laborer or mechanic is employed on that work, to work more than 40 hours in that workweek, except as provided 40 U.S.C. Chapter 37; and
 - b. When a violation of clause (1) occurs, the contractor and any subcontractor responsible for the violation are liable
 - i. to the affected employee for the employee's unpaid wages; and
 - ii. to the government, the District of Columbia, or a territory for liquidated damages as provided in the contract.