

Resolution No. _____

THE STATE OF TEXAS §

COUNTY OF DENTON §

**AGREEMENT BETWEEN THE
CITY OF LEWISVILLE, TEXAS AND
BOOK DRIVE FOR KIDS**

This Agreement is hereby entered into by and between the City of Lewisville, Texas, a home rule municipal corporation, (hereinafter referred to as City) and BOOK DRIVE FOR KIDS, a Texas 501(c)(3) corporation (hereinafter referred to as Agency) (jointly, hereinafter referred to as the Parties).

WHEREAS, the City Council has reviewed the scope of services of the Agency and has determined that the Agency performs an important human service for the residents of Lewisville without regard to race, religion, color or national origin and therefore Council recommends funding the Agency; and

WHEREAS, the City Council finds that the services provided by the Agency under this Agreement are beneficial to the residents of the City and serves a valid public purpose by providing direct services to low-to-moderate income Lewisville residents to address basic needs and barriers to self-sufficiency, specifically the objectives outlined in Section III of this Agreement, below; and

WHEREAS, the City has determined that this Agreement contains sufficient controls to ensure that the above-mentioned public purposes are carried out in all transactions involving the use of public funds and resources; and

WHEREAS, the City has determined that the Agency merits assistance and has provided for \$5,000 in its budget for funding the Agency.

NOW, THEREFORE, the parties hereto mutually agree as follows:

I. RECITALS INCORPORATED

The foregoing recitals stated above shall be and are hereby incorporated in this Section I as if said recitals were fully set forth herein.

II. PROGRAM SUMMARY

The Agency shall in a satisfactory and proper manner perform the following tasks, and achieve the goals, for which the monies provided by the City may be used:

The Soaring Summer Reader program through Book Drive for Kids is a TEKS-aligned, targeted reading kit designed to engage students and family members with the joy of reading during the summer months. The Soaring Summer Reading program will provide low-income families with access to the number of books required to sustain or improve reading skills over the summer for children exiting pre-kindergarten through second grade, and will improve parental engagement through the Student Enrichment Guide.

III. SCOPE OF SERVICES

- A. Target Lewisville (Unduplicated) Clients: 111
- B. Service Unit 1: Provide 111 One Summer Reading Kit(s). Each One Summer Reading Kit(s) will be reimbursed up to \$45.00 per service unit not to exceed \$5,000 for the entire Agreement.

IV. OUTCOME MEASURES

- A. Intermediate Outcome Measure:
 - 1. 100% of participants will receive a Summer Reading Kit with age-appropriate and TEKS aligned books and materials. They will be encouraged to engage with books & comprehension activities throughout the summer.
- B. Long-Term Outcome Measure:
 - 1. 80% of children will read Summer Reading Kit books over the summer
- C. Performance Measure –The City uses objectives (Suitable Living Environment, Decent Housing, or Creating Economic Opportunities) and outcomes (Availability, Accessibility, or Sustainability) matching the U.S. Department of Housing and Urban Development's (HUD's) performance reporting when setting up public services at the beginning of each program year.

V. OBLIGATIONS OF AGENCY

In consideration of the receipt of funds from the City, Agency agrees to the following terms and conditions, in addition to all other terms and conditions set forth herein:

- A. Agency shall provide reports to the City on a monthly basis. See Section VIII.
- B. Agency shall retain all records pertinent to expenditures incurred under this Agreement for a period of three (3) years after the expiration or termination of this Agreement.

- C. Agency shall permit the Director of the City's Department of Neighborhood and Inspection Services or his designee to audit its program performance and accounts upon request.
- D. Agency shall not enter into any contracts that would encumber City funds disbursed under this Agreement for a period that would extend beyond the term of this Agreement.
- E. Agency shall appoint a representative who will be available to meet with the City's Director of Finance and other city officials upon request.
- F. Agency shall maintain, at its expense, insurance throughout the term of the Agreement, in accordance with Attachment A- Insurance Requirements. All Certificates of Insurance shall be kept current and shall be forwarded to the Grants Specialist of the City by cover letter from the Subrecipient. Insurance certificate must be received and approved by the City **prior to Agency submitting the first Request for Reimbursement as outlined in Section VII, below.**

VI. TIME OF PERFORMANCE

The services set forth as eligible for reimbursement under this Agreement shall be undertaken by the Agency within the following time frame (the "Term"):

OCTOBER 1, 2024 THROUGH SEPTEMBER 30, 2025

VII. METHOD AND TIMING OF PAYMENT

- A. Payment by the City for services provided hereunder will be reimbursed monthly within 21 days following timely receipt of proper reporting documents as outlined in Section VIII, below. Reimbursements will be made at the contracted cost per service unit(s) (See Section III – Scope of Services), as provided for in Section VII.B., below.
- B. It is expressly understood and agreed that repayment shall be based on a cost per service unit delivered for services provided in the previous month, up to a maximum repayment per month not to exceed one-tenth of the total award amount, subject to the following:
 - 1. In the event that Agency would be eligible for repayment for services provided during a month but is unable to receive full repayment for those services due to the month maximum repayment, Agency may "roll over" the surplus services provided to a subsequent month during the term of this Agreement in which services provided have not reached the monthly maximum repayment limit, and they may be counted toward that month's total services provided. The City reserves the right to

request additional documentation if necessary to ensure that Agency does not receive duplicate payments for services.

2. The last month of the term of this Agreement shall not have a maximum repayment limit.
- C. It is expressly understood that no reimbursement will be provided without the documentation required by Section VIII, below, outlining the services provided by the Agency under this Agreement and the eligible expenses incurred by Agency in providing such services.
- D. It is expressly understood and agreed that in no event under the terms of this Agreement will the total funding hereunder exceed the maximum sum of \$5,000 for all the services rendered.

VIII. EVALUATION

The Agency agrees to participate in the requirements outlined in the City of Lewisville City Fund Monitoring Guide (City has copy available for review or reproduction). The Agency agrees to make available its financial records for review by the City at the City's discretion. In addition, the Agency agrees to provide the City the following data and/or reports no later than the 15th of each month during the Term regarding the previous month's data:

- A. Performance Objectives Report
- B. Client Services Summary Report
- C. Request for Reimbursement

Forms for these reports will be available on and submitted through the City's online grants portal. The Subrecipient shall ensure that clients included in the above reports are reported as Unduplicated the first time they are included in a report during the Term, and that the client is then reported as Duplicated in all subsequent reports where the client received services. Multiple failures to submit timely reports will be reflected in the Agency file and may be considered in future application requests for City grants.

IX. SUSPENSION OR TERMINATION

- A. The City may suspend payments to the Agency, in whole or part, or terminate this Agreement, for cause. Cause shall include but not be limited to the following:
 1. Agency's improper use, misuse, or inept use of funds.
 2. Agency's failure to comply with the terms and conditions of this Agreement, including but not limited to failure to provide services

that have been identified herein as fulfilling an eligible public purpose in accordance with the requirements for such services as herein set forth.

3. Agency's submission of data and/or reports that are inaccurate or incomplete in any material respect.
 4. In the case of Force Majeure, as defined in Section X.L. of this Agreement, below.
- B. In case of suspension of payments, the City shall provide the Agency with written notice of such suspension and the conditions precedent to the resumption of funding and specify a reasonable date for compliance. Suspension shall become effective as of the date of such written notice.
- C. In case of termination for cause, the City shall provide the Agency with written notice of termination and the reasons therefor, and Agency shall have thirty (30) days to cure. If the cause/s of termination is/are not cured, as determined by the City Manager in her sole and absolute discretion, within thirty (30) days after the date of written notice thereof from the City, this Agreement shall terminate. The City Manager shall have the authority, but not the obligation, to extend this cure period at her sole and absolute discretion for a period up to sixty (60) additional days, if she determines that substantial progress is being made toward curing the cause/s of termination.
- D. Either party may terminate this Agreement without cause upon giving the other party sixty (60) days written notice of such termination.

X. MISCELLANEOUS

- A. Confidential Information. To the extent allowed by law, City will safeguard and keep from release any documents marked "proprietary" or information not generally available to the public. However, City will, if required, comply with all requirements of the Texas Public Information Act with regard to any documents in its possession at the time of a request made under that Act.
- B. Notices. Notices required by this Agreement shall be in writing and delivered via mail (postage prepaid), commercial courier, or personal delivery or sent by facsimile or other electronic means. Any notice delivered or sent as aforesaid shall be effective on the date of delivery or sending. All notices and other written communications under this Agreement shall be addressed to the individuals indicated below, unless otherwise modified by subsequent written notice.

Communication, details, and notices concerning this Agreement shall be directed to the following representatives:

<u>City</u>	<u>Agency</u>
Rachel Hiles, Grants Specialist City of Lewisville 151 W Church St P.O. Box 299002 Lewisville, TX 75029 972-219-5026 rhiles@cityoflewisville.com	Michelle Cook, Co-Founder & Executive Director BOOK DRIVE FOR KIDS 75-2822224 1301 Waters Ridge Dr Lewisville, TX 75057 214-642-4731 michelle@bookdriveforkids.com

- C. Independent Contractor. Nothing contained in this Agreement is intended to, or shall be construed in any manner, as creating or establishing the relationship of employer/employee between the parties. The Agency shall at all times remain an independent contractor with respect to the services to be performed under this Agreement.
- D. Compliance with Laws. The Agency shall comply with all applicable federal, state, and local statutes, regulations, ordinances, and other laws, including, but not limited to the Immigration Reform and Control Act (IRCA).
- E. Indemnification, Defense, and Hold Harmless. **THE AGENCY AGREES TO DEFEND, INDEMNIFY AND HOLD THE CITY, ITS OFFICERS, AGENTS, AND EMPLOYEES, HARMLESS AGAINST ANY AND ALL CLAIMS, LAWSUITS, JUDGMENTS, COSTS AND EXPENSES FOR PERSONAL INJURY (INCLUDING DEATH), PROPERTY DAMAGE OR OTHER HARM FOR WHICH RECOVERY OF DAMAGES IS SOUGHT, SUFFERED BY ANY PERSON OR PERSONS, THAT MAY ARISE OUT OF OR BE OCCASIONED BY AGENCY'S BREACH OF ANY OF THESE TERMS AND CONDITIONS OF THIS AGREEMENT OR BY AGENCY'S PERFORMANCE OR NONPERFORMANCE OF THE SERVICES OR SUBJECT MATTER CALLED FOR IN THE AGREEMENT OR BY ANY NEGLIGENT OR STRICTLY LIABLE ACT OR OMISSION, INTENTIONAL TORT, INTELLECTUAL PROPERTY INFRINGEMENT, OR FAILURE TO PAY A SUBCONTRACTOR OR SUPPLIER COMMITTED BY AGENCY, ITS OFFICERS, AGENTS, EMPLOYEES OR SUBCONTRACTORS, IN THE PERFORMANCE OF THE SERVICES FUNDED BY THIS AGREEMENT; EXCEPT THAT THE INDEMNITY PROVIDED FOR IN THIS PARAGRAPH SHALL NOT APPLY TO ANY LIABILITY RESULTING FROM THE SOLE NEGLIGENCE OR FAULT OF THE CITY, ITS OFFICERS, AGENTS, EMPLOYEES,**

OR SEPARATE CONTRACTORS, AND IN THE EVENT OF JOINT AND CONCURRING NEGLIGENCE OR FAULT OF THE AGENCY AND THE CITY, RESPONSIBILITY AND INDEMNITY, IF ANY, SHALL BE APPORTIONED IN ACCORDANCE WITH THE LAW OF THE STATE OF TEXAS, WITHOUT WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW AND THE CITY'S REASONABLE ATTORNEY'S FEES SHALL BE REIMBURSED IN PROPORTION TO THE AGENCY'S LIABILITY. THE PROVISIONS OF THIS PARAGRAPH ARE SOLELY FOR THE BENEFIT OF THE PARTIES HERETO AND NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY.

- F. Governing Law and Venue. This Agreement is governed by the laws of the State of Texas. Exclusive venue for any dispute arising out of this Agreement is in Denton County, Texas.
- G. Governmental Immunity. Unless otherwise required under the law, the Parties agree that the City has not waived its governmental immunity by entering into and performing their obligations under this Agreement.
- H. Arbitration. In the event of a dispute which may arise under this Agreement, the City does not agree to arbitration.
- I. Amendment. This Agreement may be modified or rescinded only by a written instrument signed by both of the Parties or their duly authorized agents.
- J. Successors and Assigns. Agency binds itself and its partners, successors, executors, administrators and assigns to this Agreement in respect to all covenants of this Agreement. Agency shall not assign, sublet or transfer its interest in this Agreement without the written consent of the City. Nothing herein shall be construed as giving any right or benefits hereunder to anyone other than the City and the Agency.
- K. 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.
- L. Force Majeure. If by reason of Force Majeure, either party hereto shall be rendered unable wholly or in part to carry out its obligations under this Agreement then such party shall give notice and full particulars of Force Majeure in writing to the other party within a reasonable time after occurrence of the event or cause relied upon, and the obligation of the party

giving such notice, so far as it is affected by such Force Majeure, shall be suspended during the continuance of the inability then claimed, except as hereinafter provided, but for no longer period, and such party shall endeavor to remove or overcome such inability with all reasonable dispatch. The term Force Majeure as employed herein, shall mean acts of God, strikes, lockouts, or other industrial disturbances, act of public enemy, order of any kind of government of the United States or the State of Texas or any civil military authority, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, hurricanes, storms, floods, washouts, droughts, arrests, restraint of government and people, civil disturbances, explosions, breakage or accidents to machinery, pipelines or canals, or other causes not reasonably within the control of the party claiming such inability.

- M. Waiver. The City's failure to act with respect to a breach by the Agency does not waive its right to act with respect to subsequent or similar breaches. The failure of the City to exercise or enforce any right or provision shall not constitute a waiver of such right or provision.
- N. Representations. Each signatory represents this Agreement has been read by the party for which this Agreement is executed and that such party has had an opportunity to confer with its counsel.
- O. Miscellaneous Drafting Provisions. This Agreement shall be deemed drafted equally by all parties hereto. The language of all parts of this Agreement shall be construed as a whole according to its fair meaning, and any presumption or principle that the language herein is to be construed against any party shall not apply. Headings in this Agreement are for the convenience of the parties and are not intended to be used in construing this document.
- P. Entire Agreement. This Agreement constitutes the entire agreement between the City and the Agency 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 Grantee and the Subrecipient with respect to this Agreement.
- Q. Closure. By signature below, the parties to this Agreement hereby bind themselves to the terms stated herein, including all attachments referred to herein.

[SIGNATURES APPEAR ON FOLLOWING PAGE]

IN WITNESS THEREOF, the Parties do hereby affix their signatures and enter into this funding Agreement as of the _____ day of _____, 2024. This Agreement shall become effective upon the date executed by both Parties hereto.

CITY OF LEWISVILLE, TEXAS

BOOK DRIVE FOR KIDS

BY: _____
Claire Powell
CITY MANAGER

BY: 
Michelle Cook
CO-FOUNDER & EXECUTIVE DIRECTOR

ATTEST: _____
Thomas Harris III, CITY SECRETARY

APPROVED AS TO FORM:

Lizbeth Plaster, CITY ATTORNEY

ATTACHMENT A

INSURANCE REQUIREMENTS
GENERAL CONTRACTS FOR SERVICES

A. MINIMUM SCOPE OF INSURANCE

Coverage shall be at least as broad as:

1. Insurance Services Office Commercial General Liability coverage "occurrence" form CG 00 01 (10 01). "Claims Made" form is unacceptable.
2. Workers' Compensation insurance as required by the Labor Code of the State of Texas, including Employers' Liability Insurance.

B. MINIMUM LIMITS OF INSURANCE

Vendor shall maintain limits throughout contract not less than:

1. Commercial General Liability: \$500,000 per occurrence/\$1,000,000 aggregate for bodily injury, personal injury and property damage. Policy will include coverage for:
 - a. Premises – Operations
 - b. Broad Form Contractual Liability
 - c. Products and Completed Operations
 - d. Personal Injury
 - e. Broad Form Property Damage
 - f. If applicable, Explosion Collapse and Underground (XCU) Coverage, Fire Damage, and Medical Expense.

NOTE: The aggregate loss limit applies to each project.

2. Workers' Compensation and Employer's Liability: Workers' Compensation Statutory limits as required by the Labor Code of the State of Texas and Employer's Liability minimum limits of \$500,000 per injury, \$500,000 per occurrence, and \$500,000 per occupational disease.

C. OTHER INSURANCE PROVISIONS

The policies are to contain, or be endorsed to contain the following provisions:

1. General Liability Coverage

- a. The City, its officers, officials, employees, Boards and Commissions and volunteers are to be added as "Additional Insured" as respects liability arising out of activities performed by or on behalf of the vendor, products and completed operations of the vendor, premises owned, occupied or used by the Contractor. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officers, officials, employees or volunteers.

2. Waiver of Subrogation - All Coverages

- a. Each insurance policy required by this exhibit shall waive all rights of subrogation against the City, its officers, officials, employees, and volunteers for losses arising from work performed by the vendor for the City.

3. Notice of Cancellation - All Coverages

- a. Each insurance policy required by this exhibit shall be endorsed to state that coverage shall not be suspended, voided, canceled or non-renewed by either party, reduced in coverage or in limits except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given the City, or ten (10) days prior written notice for non-payment of premium.