

LEON VALLEY UTILITY ASSISTANCE PROGRAM PERFORMANCE AGREEMENT

This **PERFORMANCE AGREEMENT** by and between Ascension DePaul Services, a Texas 501(c)3 organization (hereinafter referred to as “Non-Profit”) and **THE CITY OF LEON VALLEY** (hereinafter referred to as the “City”) is made and executed on the following recitals, terms and conditions.

WHEREAS, on March 11, 2021, the President of the United States of America signed into law the American Rescue Plan Act (ARPA) which provides fiscal relief funds to State and Local Governments, and other program areas aimed at mitigating the continuing effects of the COVID-19 Pandemic; and

WHEREAS, approximately \$350 billion of the ARPA funding was allotted to assist the United States’ state, local, tribal, and territory governments in responding to the coronavirus pandemic; and

WHEREAS, ARPA includes State and Local Fiscal Recovery Funds to support urgent COVID response efforts to decrease the spread of the virus; to replace lost public sector revenue to strengthen support for vital public services; to support immediate economic stabilization for households and businesses; and to address systemic public health and economic challenges that have contributed to unequal impacts of the pandemic on certain populations; and

WHEREAS, the United States Department of Treasury deposited the City of Leon Valley’s first tranche of funds of one million, five hundred twenty-four thousand, six hundred twenty-six and 96/100 Dollars (1,524,626.95); and

WHEREAS, the City Council does now find and determine that providing additional financial assistance in an amount not to exceed **Thirty-two thousand four hundred thirteen dollars 38/100 dollars (\$32,413.38)** of funding from the ARPA Funds to be administered by Non-Profit entities to provide utility assistance services to households in Leon Valley is consistent with the guidance provided by the United States Department of Treasury, serves a public purpose, and is in the best interest of the community.

WHEREAS, the City Council for the City of Leon Valley passed and approved Resolution **No. 21-047R** on the 17th of January 2023 and thus authorized and authorized the City Manager to enter into a Performance Agreement with Ascension DePaul Services to expend funds on utility assistance programs that conform to the stipulations of the Department of Treasury; and

WHEREAS, the City Council for the City of Leon Valley desires to enter into this agreement with Non-Profit to administer and distribute Utility Assistance funds on qualified expenditures to Leon Valley households on behalf of the City.

NOW, THEREFORE, for and in consideration of the agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby

acknowledged, the City and Non-Profit agree as follows:

SECTION 1. FINDINGS INCORPORATED.

The foregoing recitals are hereby incorporated into the body of this Agreement and shall be considered part of the mutual covenants, consideration and promises that bind the parties.

SECTION 2. TERM & TERMINATION.

The term of this Agreement shall begin as of the date of the last signature set forth below and shall expire as of **December 31, 2023**, unless terminated sooner under the provisions hereof.

The City may terminate this Agreement, without recourse, liability, or penalty against the City, upon written notice to Non-Profit.

SECTION 3. DEFINITIONS.

The following words shall have the following meanings when used in this Agreement.

- a) **Agreement.** The word “Agreement” means this Performance Agreement, together with all exhibits and schedules attached to this Agreement from time to time, if any.
- b) **City.** The word “City” means the City of Leon Valley, Texas, its successors and assigns, whose address for the purpose of this Agreement is 6400 El Verde, Leon Valley, Texas 78238.
- c) **Non-Profit.** The word “Non-Profit” mean the Ascension DePaul Services, a Texas non-profit, its successors and assigns, whose address for the purposes of this Agreement is 7607 Somerset Road, San Antonio, Texas 78211.
- d) **Effective Date.** The words “Effective Date” mean the date of the latter to execute this Agreement by and between the Non-Profit and the City.
- e) **Event of Default.** The words “Event of Default” mean and include any of the Events of Default set forth below in the section entitled “Events of Default.”
- f) **Overdue / Past due.** The words “Overdue” and “Past due” and used synonymously and mean a utility bill that is late by the terms of the service agreement with the provider and has not been paid for a minimum of forty-five days.
- g) **Utility Assistance.** The words “Utility Assistance” shall mean and include basic electrical service, water, sewer, natural gas, and sanitation services.
- h) **Qualified Expenditures.** The words “Qualified Expenditures” mean those costs associated

with past-due utilities due to unforeseen financial hardships. Utility assistance costs include, but are not limited to overdue utility bills, reconnection fees, late charges, and other fees accessed to maintain basic utilities for the household. Applicant is responsible for providing supporting evidence of past due utility bill to the non-profit entity.

- i) **Term.** The word “Term” means the term of this Agreement as specified in Section 2 of this Agreement.

SECTION 4. ADMINISTRATION OF THE PROGRAM

- (a) **Authority.** The City has approved and authorized disbursement of funds to the Non-Profit to administer the Utility Assistance Program on behalf of the City in accordance with the Texas Local Government Code §252.022(a)(1).
- (b) **Origin of Funds.** The funds provided under this Agreement are being dispersed from the City’s American Rescue Plan Act funds pursuant to the COVID-19 Pandemic Response & Relief.
- (c) **Payment of Funds.** Funds allocated under this Agreement shall be disbursed to the Non-Profit within fourteen days upon the effective date of this Agreement.
- (d) **Reporting.** Quarterly Fiscal and Needs Met report shall be provided to the City and shall include:
 - Name and Address of Applicant(s)
 - Type of Utility Assistance and amount of each need;
 - Total Funds distributed to the Household;
 - Disclosure of administrative hours and fees accessed per household
- (e) **Stop-Loss.** Fees incurred by the Non-Profit to administer the program have been set at \$35.00 per hour plus mileage. Mileage will only be applicable in rare cases to serve the elderly and disabled. Administration fees shall not exceed **Fifteen Thousand and No/100 (\$15,000.00)** for the administration of the Utility Assistance Program.
- (f) **Guarantee of payment to Administrator.** The administrator will be paid for all hours, regardless of availability of funds in the grant program. The administrator will take payment of fees at the end of every quarter. The administrator will stop accepting and reviewing applications once the funds are exhausted. The administrator must provide notice to city staff once all funds have been exhausted. In the event that funds are exhausted and the administrator’s fee has not been collected the City will pay the fee out of the economic development operations account.
- (g) **Repayment of Funds.** In the event that any funds provided to Non-Profit pursuant to this Agreement must be repaid, the funds shall be repaid to the City’s American Rescue Plan Act fund.

- (h) **Term.** In order to be eligible for Utility Assistance funding, Non-Profit shall disburse funds to vendor(s) on or before December 31, 2023. Non-Profit agrees to submit final Utility Assistance Program reports to City no later than January 15, 2024.

SECTION 5. AFFIRMATIVE COVENANTS OF DEVELOPER.

Non-Profit covenants and agrees with the City, while this Agreement is in effect, it shall comply with the following terms and conditions:

- (a) **Operate Non-Profit.** Non-Profit agrees during the Term of this Agreement to maintain and keep open the Non-Profit entity in good standing with the State of Texas and Internal Revenue Bureau.
- (b) **Records.** Non-Profit shall maintain appropriate records for the Term of this Agreement to provide accountability for all expenditures of dispersed funds, reporting measures, and funds received from the City and dispersed under this Agreement. Records maintained by Non-Profit will, at a minimum, identify the supporting documentation prepared by Non-Profit to permit an audit of its accounting systems and payment verification with respect to the expenditure of any funds provided under this Agreement.
- (c) **Report.** At the Term of this Agreement the Non-profit agrees to report to the City, including all records-maintained accounting for all expenditures of dispersed funds, reporting measures, and funds received from the City and dispersed under this Agreement.
- (d) **Utility Assistance Funds.** Non-profit agrees during the Term of this Agreement, that all financial assistance dispersed shall be to individuals and families directly impacted by a loss of income and all funds under this Agreement shall be provided to families and households located only in Leon Valley, Texas.
- (e) **Audit.** If any audit, monitoring, investigations, review of awards, or other compliance review reveals any discrepancies, inadequacies, or deficiencies which are necessary to correct in order to maintain compliance with the City's Grant Agreement, the American Rescue Plan Act, United States Department of the Treasury Guidelines applicable to ARPA funding, other applicable laws, regulations, or City's obligations, Non-Profit agrees to correct such discrepancies or inadequacies within thirty (30) calendar days after City's receipt of the findings.
- (f) **Performance Conditions.** Non-Profit agrees to make, execute and deliver to City such other instruments, documents and other agreements as City or its attorneys may reasonably request to evidence this Agreement.
- (g) **Performance.** Non-Profit agrees to perform and comply with all terms, conditions, and provisions set forth in this Agreement and in all other instruments and agreements by and

between the Non-Profit and City.

SECTION 6. AFFIRMATIVE COVENANTS OF THE CITY.

City covenants and agrees with Non-Profit that, while this Agreement is in effect, it shall comply with the following terms and conditions:

- (a) **Financial Assistance for Qualified Expenditures.** City covenants and agrees to provide financial assistance in the amount not to exceed **Thirty-two thousand four hundred thirteen dollars 38/100 dollars (\$32,413.38)** to Non-Profit. The City shall disburse funds to the Non-Profit for funds within fourteen days upon the Effective Date of this Agreement to administer the Utility Assistance Program by utilizing the funds for qualified expenditures.
- (b) **Performance.** City agrees to perform and comply with all terms, conditions, and provisions set forth in this Agreement and in all other instruments and agreements by and between Non-Profit and City.

SECTION 7. CESSATION OF ADVANCES.

If the City has made any commitment to provide any financial assistance to Non-Profit, whether under this Agreement or under any other agreement, the City shall have no obligation to advance or disburse the financial assistance if: (i) Non-Profit becomes insolvent, files a petition in bankruptcy or similar proceedings, or is adjudged bankrupt; or (ii) an Event of Default occurs.

SECTION 8. EVENTS OF DEFAULT.

Each of the following shall constitute an Event of Default under this Agreement:

- (a) **General Event of Default.** Failure of Non-Profit or City to comply with or to perform any other term, obligation, covenant or condition contained in this Agreement, or failure of Non-Profit or City to comply with or to perform any other term, obligation, covenant or condition contained in any other agreement by and between Non-Profit or City is an Event of Default.
- (b) **False Statements.** Any warranty, representation, or statement made or furnished to the City by or on behalf of Non-Profit under this Agreement that is false or misleading in any material respect, either now or at the time made or furnished is an Event of Default.
- (c) **Insolvency.** Non-Profit's insolvency, appointment of receiver for any part of Non-Profit's property, any assignment for the benefit of creditors of Non-Profit, any type of creditor workout for Non-Profit's, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against Non-Profit is an Event of Default.

SECTION 9. EFFECT OF AN EVENT OF DEFAULT.

In the event of default under Section 7 of this Agreement, the non-defaulting party shall give written notice to the other party of any default, and the defaulting party shall have thirty (30) days to cure said default. Should said default remain uncured as of the last day of the applicable cure period, and the non-defaulting party is not otherwise in default, the non-defaulting party shall have the right to immediately terminate this Agreement. In the event, Non-Profit defaults and is unable or unwilling to cure said default within the prescribed time period, the amounts provided by the City to Non-Profit pursuant to Section 5(a) of this Agreement shall become immediately due and payable by Non-Profit to the City.

SECTION 10. INDEMNIFICATION.

Non-profit shall indemnify, save, and hold harmless the City, its directors, officers, agents, attorneys, and employees (collectively, the “Indemnitees”) from and against: (i) any and all claims, demands, actions or causes of action that are asserted against any Indemnatee if the claim, demand, action or cause of action directly or indirectly relates to tortious interference with contract or business interference, or wrongful or negligent use of City’s grant advances by Non-Profit or its agents and employees; (ii) any administrative or investigative proceeding by any governmental authority directly or indirectly related, to a claim, demand, action or cause of action in which the City is a disinterested party; (iii) any claim, demand, action or cause of action which directly or indirectly contests alleges the legal authority of the City or Non-Profit to enter into this Agreement; and (iv) any and all liabilities, losses, costs, or expenses (including reasonable attorneys’ fees and disbursements) that any Indemnatee suffers or incurs as a result of any of the foregoing; provided, however, that Non-Profit shall have no obligation under this Section to the City with respect to any of the foregoing arising out of the gross negligence or willful misconduct of the City or the breach by the City of this Agreement. If any claim, demand, action or cause of action is asserted against any Indemnatee, such Indemnatee shall promptly notify Non-Profit, but the failure to so promptly notify Non-Profit shall not affect Business Owner’s obligations under this Section unless such failure materially prejudices Non-Profit’s right to participate in the contest of such claim, demand, action or cause of action, as hereinafter provided. If requested by Non-Profit in writing, as so long as no Default or Event of Default shall have occurred and be continuing, such Indemnatee shall in good faith contest the validity, applicability and amount of such claim, demand, action or cause of action and shall permit Non-Profit to participate in such contest. Any Indemnatee that proposes to settle or compromise any claim, demand, action, cause of action or proceeding for which Non-Profit may be liable for payment of indemnity hereunder shall give Non-Profit written notice of the terms of such proposed settlement or compromise reasonably in advance of settling or compromising such claim or proceeding and shall obtain Non-Profit’s concurrence thereto.

SECTION 11. MISCELLANEOUS PROVISIONS.

The following miscellaneous provisions are a part of this Agreement:

- a) Assignment. This Agreement shall bind and benefit the respective Parties and their legal successors and shall not be assignable, in whole or in part, by any party without first obtaining written consent of the other party.
- b) Amendment or Modification. Except as otherwise provided in this Agreement, this Agreement shall be subject to change, amendment, or modification only in writing, and by the signatures and mutual consent of the Parties.
- c) Parties in Interest. This Agreement shall be for the sole and exclusive benefit of the Parties hereto and shall not be construed to confer any rights upon any third party.
- d) Remedies Not Exclusive. The rights and remedies contained in this Agreement shall not be exclusive but shall be cumulative of all rights and remedies now or hereinafter existing, by law or in equity.
- e) Waiver. The failure of any party to insist in any one or more instances on the performance of any of the terms, covenants or conditions of this Agreement, or to exercise any of its rights, shall not be construed as a waiver or relinquishment of such term, covenant, or condition, or right with respect to further performance.
- f) Entire Agreement. This Agreement constitutes the entire agreement between the Parties related to the subject matter of this Agreement and supersedes any and all prior agreements, whether oral or written, dealing with the subject matter of this Agreement.
- a) Venue. This Agreement shall be performable and enforceable in the state district courts of Bexar County, Texas, and shall be construed in accordance with the laws of the State of Texas.
- b) Severability. If any term or provision of this Agreement is held to be invalid, void or unenforceable by a court of competent jurisdiction, the remainder of the terms and provisions of this Agreement shall remain in full force and effect and shall not in any way be invalidated, impaired or affected.
- c) Notices. Any notice provided or permitted to be given under this Agreement must be in writing and may be served by (i) depositing the same in the United States mail, addressed to the party to be notified, postage prepaid, registered or certified mail, return receipt requested; or (ii) by delivering the same in person to such party; or (iii) by overnight or messenger delivery service that retains regular records of delivery and receipt; or (iv) by facsimile; provided a copy of such notice is sent within one (1) day thereafter by another method provided above. The initial addresses of the parties for the purpose of notice under this Agreement shall be as follows:

If to City:

CITY OF LEON VALLEY

6400 El Verde
Leon Valley, Texas 78238
Attention: City Manager

With copy to: Denton Navarro Rocha Bernal & Zech, P.C.
2417 North Main Avenue
San Antonio, Texas 78212
Attention: Roxana I. Perez Stevens

If to Non-Profit: ASCENSION DEPAUL SERVICES
7607 Somerset Road
San Antonio, Texas 78211

d) No Joint Venture. Nothing contained in this Agreement is intended by the Parties to create a partnership or joint venture between the Parties and any implication to the contrary is hereby expressly disavowed. It is understood and agreed that this Agreement does not create a joint enterprise, nor does it appoint either Party as an agent of the other for any purpose whatsoever. Except, as otherwise specifically provided herein, neither Party shall in any way assume any of the liability of the other for acts of the other or obligations of the other.

e) Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be considered an original, but all of which constitute one instrument.

f) Governmental Immunity. The City does not waive or relinquish any immunity or defense on behalf of itself, its officers, employees, Councilmembers, and agents as a result of the execution of this Agreement and the performance of the covenants and actions contained herein.

g) Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, representatives, successors, and assigns, and the terms hereof shall run with the Property.

h) Legal Construction. If any provision in this Agreement is for any reason unenforceable, to the extent the unenforceability does not destroy the basis of the bargain among the parties, such unenforceability will not affect any other provision hereof, and this Agreement will be construed as if the unenforceable provision had never been a part of this Agreement. Whenever the context requires, the singular will include the plural and neuter include the masculine or feminine gender, and vice versa. Article and section headings in this Agreement are for reference only and are not intended to restrict or define the text of any section. This Agreement will not be construed more or less favorably between the parties by reason of authorship or origin of language.

i) Recitals; Exhibits. Any recitals in this Agreement are represented by the parties hereto to be accurate, constitute a part of the parties' substantive agreement, and are fully incorporated herein as matters of contract and not mere recitals. Further, any exhibits to this

Agreement are incorporated herein as matters of contract and not mere exhibits.

j) Compliance with the AMERICAN RESCUE PLAN ACT. Should Non-Profit fail to comply or if federal agencies or authorities having jurisdiction over the funding subsequently determine that the funding was used improperly or that a payment was made but later determined to not be actual or allowable costs, Non-Profit warrants that it will return to City the amount identified as improperly used or not allowable, whether during the Term of this Agreement or after. Non-Profit shall refund any such payment to City.

k) Public Information. Notwithstanding any provisions of this Agreement to the contrary, Non-Profit acknowledges that City and this Agreement are subject to the Texas Public Information Act, Texas Government Code Chapter 552 (the "PIA"). Non-Profit acknowledges that City will comply with the PIA, as interpreted by its legal counsel based on judicial opinions and opinions of the Attorney General of the State of Texas.

l) Time is of Essence. Time is of the essence in the performance of this Agreement.

[Signatures and acknowledgments on the following pages]

THE PARTIES ACKNOWLEDGE HAVING READ ALL THE PROVISIONS OF THIS PERFORMANCE AGREEMENT, AND THE PARTIES AGREE TO ITS TERMS. THIS AGREEMENT IS EFFECTIVE AS OF THE EFFECTIVE DATE AS IS PROVIDED HEREIN.

CITY:

LEON VALLEY, TEXAS,
a Texas home-rule municipality

By: _____
Crystal Caldera
Leon Valley City Manager

Date Signed: _____

NON-PROFIT:

Ascension DePaul Services,
a Texas Non-Profit Organization

By: _____
Patrick Butler
President and Chief Executive Officer

Date Signed: _____