

COUNTY OF HIDALGO, §
STATE OF TEXAS §

**CARES ACT INTERLOCAL COOPERATION AGREEMENT BETWEEN
THE COUNTY OF HIDALGO, TEXAS, AND THE
HIDALGO INDEPENDENT SCHOOL DISTRICT**

THIS Agreement is made on and entered into effective as of the _____ day of _____, 2020, by and between **COUNTY OF HIDALGO, TEXAS**, hereinafter referred to as (“County”), and **HIDALGO INDEPENDENT SCHOOL DISTRICT** hereinafter referred to as (“District”), collectively referred to as “Parties” and pursuant to the provisions of the Texas Interlocal Cooperation Act (“Act”), Chapter 791, et seq., Texas Government Code, as follows:

WITNESSETH:

WHEREAS, the District is organized as an Independent School District under the laws of the State of Texas for the purpose of educating and providing other activities with assist and benefit the youth and general community within its district boundary, and within the boundary of Hidalgo County; and

WHEREAS, the County is defined as a “Local Government” under the Interlocal Cooperation Act, a political subdivision organized under the laws of the State of Texas; and

WHEREAS, the County and District and their respective constituents have been affected by the COVID-19/Coronavirus public health emergency and the resulting Federal, State and Local disaster declarations and executive orders regarding the same; and

WHEREAS, the County, each pursuant to its statutory and constitutional authority, are responsible for the safety and wellbeing of the citizens; the District pursuant to its statutory authority, is responsible for the safety and well-being of its students, employee, faculty and administration, and both are desirous that necessary services and equipment are available to respond and mitigate the public health emergency; and

WHEREAS, the County and the District are authorized to enter into this Agreement pursuant to the Act, which authorizes local governments to contract with each other and with agencies of the state, to perform governmental functions and services under the terms of the Interlocal Cooperation Act; and

WHEREAS, on or about March 27, 2020, the Federal Government passed the Coronavirus Aid , Relief and Economic Security Act (the “CARES Act”), including the Coronavirus Relief Fund (the “CRFund”) which provides for direct payments to qualifying units of local governments navigating the impact of the COVID-19 outbreak; and

WHEREAS, the County met the population threshold and received a direct distribution of the CRFund to be used for expenditures that were directly related to and incurred as a result of the COVID-19 public health emergency; and

WHEREAS, pursuant to guidance provided by the United States Department of Treasury: (Coronavirus Relief Fund Guidance for State, Territorial, Local and Tribal Governments) (the “Guidance”)

issued April 22, 2020, and updated June 30, 2020, and September 2, 2020 (which are attached hereto and incorporated by reference herein as **Exhibit “A”**), the CRFund allows a recipient to transfer funds to another unit of government provided that the transfer qualifies as *a necessary expenditure incurred due to the public health emergency and meets the other criteria of section 601(d) of the Social Security Act as outlined in the Guidance*; and

WHEREAS, the County desires to designate a portion of the funds received to reimburse District for expenses incurred as a result of the COVID-19 public health emergency in compliance with the terms and criteria of the CRFund and as more fully described below; and

WHEREAS, amounts paid from the CRFund are subject to restrictions outlined in the Guidance and as set forth in section 601(d) of the Social Security Act, as added by section 5001 of the CARES Act; and

WHEREAS, the CRFund further requires that all recipients and sub-recipient(s) comply with certain terms and conditions more particularly described below and in the Guidance attached as **Exhibit “A”** as well as any future guidance provided by the U.S. Department of Treasury; and

WHEREAS, County and District desire to enter into this agreement for a public purpose and for the benefit of the residents of County and District and to further detail each party’s duties and responsibilities; and

NOW THEREFORE, County and District in consideration of the mutual covenants expressed hereinafter, agree as follows:

**SECTION I
RULES AND REGULATIONS**

1.1 The District agrees to abide by the Guidance provided under the CARES Act, Coronavirus Relief Fund, and as more particularly described in section 601(d) of the Social Security Act and any further guidance issued by the United States Department of Treasury. **See Exhibit “A”**

**SECTION II
DEBARMENT/SUSPENSION CERTIFICATION**

2.1 District certifies that District and its contractors/vendors associated with this Agreement are not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded by any federal department or agency and do not appear in the Excluded Parties List System found at <http://sam.gov>.

**SECTION III
TERMS AND CONDITIONS AND PROPOSED BUDGET**

3.1 District represents that it has read and understood the terms and conditions of the CRFund attached hereto as **Exhibit “A”** and as a condition of participating in the CRFund District agrees to comply with all terms and conditions required of entities accepting funds through a sub-recipient agreement and District further warrants and represents to the County that the funds it has incurred and expended meet the criteria allowed under the CRFund as outlined below:

The CARES Act provides that payments from the CRFund may only be used to cover costs that—

1. are necessary expenditures incurred due to the public health emergency with respect to the Coronavirus Disease 2019 (COVID-19);
2. were not accounted for in the budget most recently approved as of March 27, 2020 (the date of enactment of the CARES Act) for the State or government; and
3. were incurred and expended during the period that begins on March 1, 2020, and ends on December 30, 2020.

For purposes of the CARES Act Funds, *incurred* means the unit of local government (sub-recipient) has expended the funds to cover the costs of an eligible expense. Examples of eligible expenses and prohibited costs may be found in the Guidance provided in the attached **Exhibit “A”** and in the additional CRF FAQ’s and guidance provided by the U.S. Department of Treasury (dated April 22, 2020, May 4, 2020, May 28, 2020, and August 10, 2020) which are attached hereto and incorporated by reference herein as **Exhibit “B” (to include Hidalgo County’s General Guidelines and any future updated guidance from the U.S. Treasury)**.

3.2 County has designated funds in the amount of Forty Nine Thousand Three Hundred and Twenty Five Dollars and No Cents (**\$49,325.00**) to be allocated to District on a reimbursement basis, for eligible expenses to comply with COVID-19 related public health measures to facilitate distance learning, including technological improvements, and enable compliance with COVID-19 precautions. To that end, District shall provide County with a proposed budget (**Budget**) of incurred and proposed expenses within the designated allocation to be made part of this Agreement. (**See Budget form with instructions attached hereto as Exhibit “C”**). The **Budget** is intended to demonstrate how District plans to expend the designated funds. Failure to expend designated funds by October 31, 2020, may result in re-programming and/or reallocation of CRFunds by County.

3.3 In consideration of the District’s representation that it has complied with the terms of the CRFund and further agrees to comply with the terms of this sub-recipient Agreement, County agrees it will reimburse to District only those amounts which meet the identified criteria after review and auditing by either County and/or the U.S. Department of Treasury. **See Exhibits “A” and “B”**

3.4 District agrees to notify County in writing and obtain from County written approval, prior to any proposed changes, delays or departures from their proposed Budget and/or the requirements of this Agreement. Budget adjustments will be considered and may be submitted for approval to Mr. Sergio Cruz, Hidalgo County Budget Officer.

3.5 County will not be liable for costs incurred or performances rendered by District before commencement of this Agreement or after termination of this Agreement and will not be responsible for reimbursements pertaining to costs incurred or performances rendered that are not in compliance with this Agreement. District further represents and understands that amounts reimbursed to District will be released contingent upon submission of eligible expenses incurred on or after March 1, 2020, which meet the criteria and Guidance provided by the U.S. Treasury and County. **See Exhibits “A” and “B”**

3.6 Upon request, District agrees to provide County with copies of all current and applicable payment and overtime policies, workers compensation policies, retirement rates, unemployment rates, and any other reimbursable benefit and rates of payment as required for reimbursement under this Agreement.

SECTION IV RECORDS AND REPORTS

4.1 District agrees to establish and maintain all necessary records and reports that may be required for reimbursement of CRFunds from County. District understands that it is solely the District's responsibility to keep all records and reports pertaining to CRFund activity within their municipality in a manner acceptable to the U.S. Department of Treasury.

4.2 Per the CARES Act Guidance, all government recipients are required to keep records sufficient to demonstrate that the amount of Fund payments to the government has been used in accordance with section 601(d) of the Social Security Act.

4.3 Pursuant to 2 CFR §200.333, District, as a sub-recipient of federal funds, must retain records and any supporting documentation for a minimum of five (5) years from the later of the completion of the CRFunds public objective, submission of the final expenditure report, any litigation, dispute or audit.

4.4 Records related to real property and equipment acquired with CRFunds shall be retained for three (3) years after final disposition.

4.5 County may direct District to retain documents for a longer period of time or to transfer certain records to County or federal custody when it is determined that the records possess a long term retention value.

4.6 Failure to maintain records and reports as required will result in delay or forfeiture of reimbursement of the District's designated CRFunds. In the event the U.S. Department of Treasury disallows expenditures submitted by District for reimbursement due to District's failure to submit the necessary records, District understands that any monies reimbursed by County shall then be repaid to County by District in accordance with §10.1.

SECTION V MONITORING VISITS

5.1 District shall give The United States Treasury Department, the Special Inspector General of the U.S. Department of Treasury, the Comptroller General of the United States, County, County Auditor, and any of their duly authorized representatives, unobstructed and full access to and the right to examine all books, accounts, records, reports, files, and other papers, things or property belonging to or in use by District pertaining to this Agreement as it pertains to the use of federal funds.

SECTION VI PAYMENT REQUESTS

6.1 Requests for reimbursement shall be submitted on the prescribed **Cost Reimbursement Request Form** (See attached **Exhibit "D"**) with supporting records and documentation necessary for submission to the U.S. Department of Treasury. Examples of supporting documentation can be found in the County's General Guidelines attached as **Exhibit "B"**. Requests for reimbursement with supporting documentation shall be submitted to **COVID-19@auditor.co.hidalgo.tx.us**.

6.2 District shall further provide County with a final Cost Reimbursement Request Form, and all documentation required no later than 30 days after the period of performance of this Agreement, November 30, 2020.

SECTION VII AUDIT REQUIREMENTS

7.1 District agrees to comply with the applicable requirements and standards as set forth in 2 CFR 200 Subpart F §§200.500 – 200.521 which are incorporated by reference herein.

SECTION VIII SUSPENSION AND TERMINATION

8.1 District understands that this Agreement may be suspended or terminated if District materially fails to comply with the provisions of the Agreement or the prescribed terms and conditions as provided in the attached **Exhibits “A”, “B”, “C” and “D”**.

8.2 If District fails to fulfill in a timely and proper manner its obligations under this Agreement, or District violates any of the agreements or stipulations of this Agreement, then the County shall provide District written notification of such non-performance. District will be given ten (10) business days to cure any non-performance. Failure to cure such non-performance will constitute a breach of this Agreement and may be the basis for immediate termination of the Agreement. **Should a breach by the District of this Agreement relate to a violation of federal law or regulation that results in The United States Department of Treasury, General Accounting Office or other applicable overseeing Federal agency demanding reimbursement from the County or the District or its successor, the County will terminate Agreement and seek reimbursement of all funds from District.** District shall not be relieved of the liability to the County for damages sustained by the County by virtue of any breach of this Agreement by District. County may take any and all appropriate action including injunctive relief against District to prevent the continued failure of District to comply with the CRFund requirements and/or failure to reimburse the County for funds disallowed by the U.S. Department of Treasury. The failure of the County to exercise any right shall in no way constitute a waiver by the County to otherwise demand payment or seek any other relief in law or in equity to which it may be justly entitled.

8.3 In addition to the termination provisions stated above, either party may terminate this Agreement with or without cause upon thirty (30) days written notice to each other. Termination of the Agreement does not exempt District’s obligation to reimburse County for any incurred expenses disallowed by the U.S. Department of Treasury or any other overseeing federal agency.

SECTION IX ASSETS

9.1 District shall not purchase any asset unless so permitted by the Guidance and to the extent the purchase of the asset is consistent with the limitation on the eligible use of funds provided by section 601(d) of the Social Security Act.

9.2 Procurement of any assets meeting the requirements of the CRFund shall be done in the form and manner as required by both State **and** Federal law, as noted in Section XIII below.

9.3 District as a Sub-Recipient of the CRFund shall maintain property records, perform a physical inventory, reconcile results of the physical inventory to property records, safeguard the property, maintain the property, and use proper disposition procedures to ensure the highest possible return. District shall be responsible for the care, maintenance, repair, custody, control, disposition and use of any asset purchased with CRFunds.

9.4 The disposition of any asset improved or acquired in part or in whole with CRFunds by the District during the covered award period or just prior to the expiration of that term, December 30, 2020, the proceeds would be subject to the restrictions on the eligible use of payments from the CRFund provided by section 601 (d) of the Social Security Act.

**SECTION X
LIABILITY FOR DISALLOWED COSTS**

10.1 The District understands and agrees that as a sub-recipient under this Agreement it shall be liable to County for any costs disallowed pursuant to financial and compliance audit(s) of District CRFunds. The District further understands and agrees that reimbursement to County of such disallowed costs shall be paid by the District from funds that were not provided or otherwise made available to District pursuant to this Agreement or any other federal award.

**SECTION XI
INDEMNITY CLAUSE AND INSURANCE REQUIREMENT**

11.1 THE PARTIES AGREE TO BE RESPONSIBLE EACH FOR THEIR OWN NEGLIGENT ACTS OR OMISSIONS, OR OTHER TORTIOUS CONDUCT IN THE COURSE OF THE PERFORMANCE OF THIS AGREEMENT WITHOUT WAIVING ANY SOVEREIGN IMMUNITY, GOVERNMENTAL IMMUNITY, OR OTHER DEFENSES AVAILABLE TO THE PARTIES UNDER FEDERAL OR STATE LAW. NOTHING IN THIS PARAGRAPH SHALL BE CONSTRUED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, IN OR TO ANY THIRD PERSONS OR ENTITIES.

11.2 County acknowledges that the District's liability for the conduct of its agents or employees is defined by applicable state and federal law. The County further acknowledges that the District has appropriate insurance coverage and/or shall self-insure as against all risks incident to or in connection with the execution, performance, attempted performance or non-performance of this Agreement. This requirement is to meet District's obligations hereunder. Each party is responsible for their own costs of insurance, including any and all deductible amounts, and no insurance carrier of either party shall have a right of subrogation against the other party to this Agreement.

**SECTION XII
DISPUTE RESOLUTION**

12.1 The Parties' representatives will meet as needed to implement the terms of the Agreement and will make a good faith effort to informally resolve any disputes. Notwithstanding any other provision of this Agreement to the contrary, unless otherwise requested or approved in writing by County, the District shall continue performance and will not be excused from performance during the period any breach of the Agreement claim or dispute is pending.

12.2 The laws of the State of Texas shall govern this agreement and all disputes arising out of or relating to this Agreement, without regard to any otherwise applicable conflict of law rules or requirements. Venue for any action, suit, litigation or other proceeding arising out of or in any way relating to this Agreement shall be commenced exclusively in the Hidalgo County District Court or the United States District Court, Southern District of Texas – McAllen Division.

12.3 District, as the sub-recipient of the CRFunds, hereby irrevocably and unconditionally consents to the exclusive jurisdiction of the courts referenced above for the purposes of prosecuting and/or defending such litigation. District further waives and agrees not to assert by way of a motion, as a defense, or otherwise, in any suit, action or proceedings, any claim that the District is not personally subject to the jurisdiction of the above referenced courts; the suit, action or proceeding is brought in an inconvenient forum; and/or venue is improper.

12.4 The Parties agree to mandatory participation in mediation as an Alternative Dispute Resolution process, before any action, suit, litigation or other proceeding arising out of or in any way relating to this Agreement may be commenced.

SECTION XIII PROCUREMENT

13.1 District agrees to conform to its own applicable purchasing laws, regulations, employment policies and procedures with respect to any purchases or employment in relation to the CRFund and/or this Agreement. **District, as a non-federal entity, is advised that procurements made with federal funds are subject to the provisions of 2 CFR §§200.317 – 200.326, and resulting contracts must contain applicable provisions described in Appendix II to Part 200 – Contract Provisions for Non-Federal Entity Contracts Under Federal Awards. Applicable federal law, including but not limited to the procurement provisions of 2 CFR 200 applicable to entities receiving federal funds must be followed and are incorporated by reference herein.**

SECTION XIV CONFLICT OF INTEREST

14.1 District covenants that none of its elected officials, officers, employees, consultants, or agents who exercise influence on the decision-making process presently has or will have any interest, direct or indirect, with any person, corporation, company or association that is hired to carry out any of the activities covered by the CRFund. District agrees that all elected officials, officers, employees, consultants or agents shall comply fully with the requirements of Texas Local Government Code Chapter 171.

14.2 District agrees that no person who is an elected official, officer, employee, consultant, or agent of the District's organization or the County's organization shall gain any interest in any corporation, company, or association that is hired to carry out any of the activities for which District is now seeking reimbursement from the CRFund.

14.3 District is responsible for repayment of funds associated with any conflict of interest that may occur either knowingly or unknowingly.

SECTION XV MISCELLANEOUS PROVISIONS

15.1 **Conflict with Applicable Law.** Nothing in this Agreement shall be construed so as to require the commission of any act contrary to law, and whenever there is any conflict between any provision of this Agreement and any present or future law, ordinance or administrative, executive or judicial regulation, order or decree, or amendment thereof, contrary to which the parties have no legal right to contract, the latter shall prevail, but in such event the affected provision or provisions of this Agreement shall be modified only to the extent necessary to bring them within the legal requirements and only during the time such conflicts exists.

15.2 **No Waiver.** No waiver by County of any breach of any provision of this Agreement shall be deemed to be a waiver of any preceding or succeeding breach of the same or any other provision hereof.

15.3 **Entire Agreement.** This Agreement contains the entire contract between the parties hereto, and each party acknowledges that neither has made (either directly or through any agent or representative) any representations or agreements in connection with this Agreement not specifically set forth herein. This Agreement may be modified or amended only by agreement in writing executed by County and District, and not otherwise.

15.4 **Texas Law to Apply.** This Agreement shall be construed under and in accordance with the laws of the State of Texas, and all obligations of the parties created hereunder are performable in Hidalgo County, Texas. The parties hereby consent to personal jurisdiction in Hidalgo County, Texas.

15.5 **Notice.** Except as may be otherwise specifically provided in this Agreement, all notices, demands, requests or communications required or permitted hereunder shall be in writing and shall either be (i) personally delivered against a written receipt, or (ii) sent by electronic mail, or (iii) sent by registered or certified mail, return receipt requested, postage prepaid and addressed to the parties at the addresses set forth below, or (iv) sent by facsimile to the parties at the addresses set forth below, as may have been theretofore specified by written notice delivered in accordance herewith:

If to County: County of Hidalgo
Attention: County Judge
100 E. Cano, 2nd Floor
Edinburg, TX 78539
(956)318-2600

With copy to: Mr. Sergio Cruz
Hidalgo County Budget Officer
2818 S. Bus. Hwy 281
Edinburg, Texas 78539
(956)292-7025
-And-

Ms. Maria Arcilia Duran, CPA
Hidalgo County Auditor
2808 S. Bus. Hwy 281
Edinburg, Texas 78539
(956)318-2511

If to District: Mr. Xavier Salina
HISD Superintendent
324 E. Flora Street
Hidalgo, Texas 78557
(956) 843-4401

Each notice, demand, request or communication which shall be delivered or mailed in the manner described above shall be deemed sufficiently given for all purposes at such time as it is personally delivered to the addressee or, if mailed, at such time as it is deposited in the United States mail.

15.6 **Additional Documents.** The parties hereto covenant and agree that they will execute such other and further instruments and documents as are or may become necessary or convenient to effectuate and carry out the terms of this Agreement.

15.7 **Successors.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, successors, and assigns where permitted by this Agreement.

15.8 **Assignment.** This Agreement shall not be assignable by District.

15.9 **Headings.** The headings and captions contained in this Agreement are solely for convenient reference and shall not be deemed to affect the meaning or interpretation of any provision or paragraph hereof.

15.10 **Gender and Number.** All pronouns used in this Agreement shall include the other gender, whether used in the masculine, feminine or neuter gender, and the singular shall include the plural whenever and as often as may be appropriate.

15.11 **Non-Discrimination.** The Agreement and all related activities shall be conducted in a manner that does not discriminate against any person on a basis prohibited by applicable law or County and District policy, including without limitation race, gender, color, national origin, religion, sex, age, veteran status, disability or any other protected status. District shall comply with applicable law, including but not limited to the provisions of Title VI of the Civil Rights Act of 1964.

15.12 **Governmental Purpose.** To the extent applicable, each party hereto is entering into this agreement for the purpose of providing for governmental services or functions and will pay for such services out of current revenues available to the paying party as herein provided.

15.13 **Governing Provisions.** Parties shall comply with all applicable laws and regulations. A non-exclusive list of regulations commonly applicable to Federal and State grants and equipment can be found in the 2 CFR 200 Uniform Administrative Requirements, Cost Principles and Audit Requirements.

15.14 **Legal Construction/Severability.** In case any one or more of the provisions contained in this Agreement will for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability will not affect any other provision thereof, and this Agreement will be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

15.15 **Immunity.** This Agreement is expressly made subject to the County's Sovereign Immunity, Title 5 of the Texas Civil Practice and Remedies Code and District's governmental immunity, and all applicable federal and state law. The Parties expressly agree that no provision of this Agreement is in any way intended to constitute a waiver of immunities from suit or from liability that the County or District has by operation of law.

15.16 **Authority to Execute.** The execution and performance of this Agreement by County and District have been duly authorized by all necessary laws, resolutions or corporate action, and this Agreement constitutes the valid and enforceable obligations of County and District in accordance with its terms.

WITNESS THE HANDS OF THE PARTIES effective as of the day and year first written above.

HIDALGO INDEPENDENT SCHOOL DISTRICT

Mr. Xavier Salinas, **Superintendent**

ATTEST

_____, District Secretary

THE COUNTY OF HIDALGO

Richard F. Cortez, County Judge

ATTEST

Arturo Guajardo, Jr., County Clerk

APPROVED AS TO FORM FOR COUNTY:

Office of Hidalgo County Criminal District Attorney,
Ricardo Rodriguez, Jr.

By: _____
Victor M. Garza, Assistant District Attorney

TABLE OF EXHIBITS

- EXHIBIT – A** **Coronavirus Relief Fund Guidance issued by the United States Department of Treasury for State, Territorial, Local and Tribal Governments on April 22, 2020 and updated June 30, 2020, and September 2, 2020, to include any future updated guidance**
- EXHIBIT – B** **Coronavirus Relief Fund FAQ’s issued on April 22, 2020, May 4, 2020, May 28, 2020 and updated August 10, 2020, and Hidalgo County Coronavirus Relief Fund General Guidelines– to include any future updated guidance**
- EXHIBIT – C** **Proposed Budget Form with Instructions**
- EXHIBIT- D** **Cost Reimbursement Form with Instructions -to include Individual Activity Report with Instructions which may be used for payroll submissions**