

**SECOND MEMORANDUM OF UNDERSTANDING
DIRECTING COUNTY CARES ACT FUNDS
TO ASSIST WITH DISTANCE LEARNING**

This Memorandum of Understanding (“MOU”) is made on this ____ day of ____ 2021 by and between the COUNTY OF HIDALGO, TEXAS (“COUNTY”), and the BOYS AND GIRLS CLUB OF PHARR (“BGC”), a Texas non-profit corporation, with its principal office located at 1026 S. Fir St., Pharr, TX.

WHEREAS, pursuant to Texas Government Code Section 418.108, Hidalgo County Judge Richard Cortez issued a Declaration of Local Disaster for Public Health Emergency on March 17, 2020, due to the imminent threat arising from the Coronavirus (COVID-19); and

WHEREAS, on March 22, 2020, the Commissioners Court of Hidalgo County issued an Order of Continuance of Declaration of Local Disaster for Public Health Emergency; and

WHEREAS, the safety, health and general welfare of the citizens of Hidalgo County is a common objective of both parties. Further, it is the objective of both parties to collaborate with each other to ensure the citizens of Hidalgo County have access to distance learning and child care, to enable compliance with COVID-19 public health emergency precautions and in an effort to mitigate the spread of COVID-19; 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 on June 30, 2020, and September 2, 2020 (which is attached hereto and incorporated by reference herein as **Exhibit “A”**), the CRFund allows a recipient to utilize funds for **necessary expenditures 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 entered into a Memorandum of Understanding with BGC on October 6, 2020 to designate a portion of the funds received to reimburse BGC for expenses incurred as a direct 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, the funds previously designated were intended to reimburse for expenses incurred through December 30, 2020, and BGC has the need for additional funds due to the ongoing public health emergency and the continued need for distance learning efforts; and

WHEREAS, the purposes of this agreement is to memorialize the understanding between the parties that the COUNTY will reimburse BGC a specified amount of the CRFund in order to directly address and reimburse necessary expenses for actions taken to facilitate compliance with COVID-19 related public health measures. In exchange, BGC will make efforts to continue to provide and facilitate distance learning services and child care to the residents of Hidalgo County as authorized in the Guidance and as more fully described below; and

WHEREAS, the COUNTY finds that this agreement, as it relates to the provision of distance learning services and child care to individuals and families that have been directly impacted by the COVID-19 public health emergency, serves a public purpose as it is for the health, safety, and wellbeing of the residents of the County of Hidalgo.

NOW, THEREFORE, in consideration of the mutual promises, conditions and covenants expressed between the parties hereto, it is understood and agreed by and between COUNTY and BGC, as follows:

RESPONSIBILITIES OF THE PARTIES:

1. BGC will provide distance learning capabilities and child care to residents of the COUNTY, to enable compliance with COVID-19 public health emergency precautions and in an effort to help mitigate the spread of COVID-19.
2. BGC will continue efforts to facilitate compliance with COVID-19 related public health measures by addressing public health needs and providing distance learning capabilities and other resources to those directly impacted by the COVID-19 public health emergency.
3. BGC will provide services and related actions as authorized in the Treasury CRF Guidance and agrees to establish and maintain all necessary records and reports that may be required and provide all necessary documentation to ensure expenditures are in compliance with the CRFund.
4. COUNTY will provide funds from the CRFund in the amount of **\$70,000.00** to reimburse BGC for necessary expenses of actions to facilitate compliance with COVID-19 related public health measures, and continue to provide distance learning capabilities and childcare to the residents of the COUNTY.
5. This Agreement is effective upon execution and ends on December 31, 2021. The term of this Agreement may be extended by mutual agreement of the parties. The Agreement may be terminated by either party without cause, upon thirty (30) days prior written notice to the other party.
6. BGC shall deliver a copy of all related supporting expense documentation, Reimbursement Request form (attached hereto and incorporated by reference as **Exhibit "B"**), and the final report of COVID-19 related expenditures to COUNTY no later than **August 31, 2021**, and shall keep the supporting documentation for a minimum of five (5) years. BGC 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 representative, 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 BGC pertaining to this Agreement as it pertains to the use of federal funds.
7. BGC 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 funds provided to directly address and cover necessary medical and public health expenses incurred directly relating to COVID-19.
8. **CONFIDENTIALITY.** In the event this collaborative effort requires the mutual sharing of information made confidential by the laws of the State of Texas and of the United States, information will only be exchanged as allowed by law.

9. LIABILITY. This Agreement is not intended to extend the liability of the Parties beyond that provided by law. Neither party waives, nor shall be deemed to have hereby waived, any immunity or defenses that would otherwise be available to it against claims arising from third parties.
10. **INDEMNIFICATION. 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. DISPUTE RESOLUTION. 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.
12. 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.
13. This Agreement may be amended or modified by the consent of both parties at any time during its term. Amendments to this Agreement must be in writing and signed by COUNTY and BGC. No change in, addition to, or waiver of any term or condition of this Agreement shall be binding either party unless approved in writing by an authorized representative of each party.
14. 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 BGC, and not otherwise.
15. 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.
16. 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 BGC: Alfredo Mata, CEO
BGC Pharr
1026 S. Fir St.
Pharr, Texas 78577
(956) 781-5437

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.

17. Neither party shall assign any right, benefit or duty under this Agreement without the other party's prior written consent.
18. This Agreement may be executed in any number of counterparts, including facsimile or scanned/emailed PDF documents. Each such counterpart, facsimile, or scanned/emailed PDF document shall be deemed an original instrument, all of which, together, shall constitute one and the same executed Agreement.
19. 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.
20. 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.
21. The Parties to the Agreement agree that 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 BGC policy, including without limitation race, gender, color, national origin, religion, sex, age, veteran status, disability or any other protected status. BGC shall comply with applicable law, including but not limited to the provisions of Title VI of the Civil Rights Act of 1964.
22. The Parties agree to comply with all applicable state or federal statute, rule, regulation, grant, contract provision, subsequent federal guidance or other similar restriction that imposes additional or greater requirements than stated in this MOU that is directly applicable to the performance under this Agreement. A non-exclusive list of regulations commonly applicable to Federal and State grants and equipment can be found in the new 2 CFR 200 Uniform Administrative Requirements, Cost Principles and Audit Requirements.
23. LIABILITY FOR DISALLOWED COSTS. BGC understands and agrees that the funds received under this Agreement are federal funds and as such, it shall be liable to County for any costs disallowed pursuant to financial and compliance audit(s) of the CRFund. BGC further understands and agrees that reimbursement to County of such disallowed costs shall be paid by BGC from funds that were not provided or otherwise made available to BGC pursuant to this Agreement or any other federal award.
24. 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.

25. IMMUNITY. This Agreement is expressly made subject to the County's Sovereign Immunity, Title 5 of the Texas Civil Practice and Remedies Code and any applicable 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 either County or BGC has by operation of law.
26. 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.
27. AUTHORITY TO EXECUTE. The execution and performance of this Agreement by County and BGC have been duly authorized by all necessary laws, resolutions or corporate action, and this Agreement constitutes the valid and enforceable obligations of County and BGC in accordance with its terms.

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

BOYS & GIRLS CLUB - Pharr

HIDALGO COUNTY

Signature

Signature

Printed Name

Printed Name

Title

Title

Date

Date

Approved as to form for Hidalgo County:
Office of Criminal District Attorney, Ricardo Rodriguez, Jr.

By: _____
Josephine Ramirez-Solis, Assistant District Attorney