

STATE OF TEXAS §

COUNTY OF HIDALGO §

**AMERICAN RESCUE PLAN ACT MEMORANDUM OF UNDERSTANDING
BETWEEN THE COUNTY OF HIDALGO, TEXAS, AND THE HIDALGO COUNTY
COMMUNITY SERVICE AGENCY FOR CORONAVIRUS STATE AND LOCAL
FISCAL RECOVERY FUNDS**

THIS Memorandum of Understanding (MOU) is made on this 30th day of November, 2021 by and between the COUNTY OF HIDALGO, TEXAS, (“County”), and the HIDALGO COUNTY COMMUNITY SERVICE AGENCY, (“CSA”), collectively referred to as “Parties” and as follows:

WITNESSETH:

WHEREAS, the CSA, a community service agency providing governmental functions and services on behalf of the County of Hidalgo; and

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, on or about March 11, 2021, the Federal Government passed the American Rescue Plan Act (“ARPA”), including the Coronavirus State and Local Fiscal Recovery Fund (the “SLFRF”) which provides for direct payments to qualifying units of local governments to respond to the COVID-19 public health emergency and its economic impacts through eligible uses; and

WHEREAS, the County received a direct distribution of the SLFRF to be used for eligible 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 June 24, 2021, The Interim Final Rule dated May 17, 2021, and The Coronavirus Local Fiscal Recovery Fund Award Terms and Conditions, (which are attached hereto and incorporated by reference herein as **Exhibit “A”**), the SLFRF allows a recipient to transfer funds to another unit of government, **provided that the funds transferred are used for an eligible use as outlined in section 603 (c)(1) of the Social Security Act, and the Guidance**; and

WHEREAS, on September 7, 2021, (amended on September 21, 2021) the County Commissioners Court approved the adoption of a Premium Pay Program for County employees, to include the CSA as a sister agency; and

WHEREAS, the County desires to designate a portion of the funds received to be transferred to CSA for expenses related to the COVID-19 public health emergency to provide premium pay through the program established by County that will provide eligible workers who perform essential work during the COVID-19 health emergency in compliance with the terms and criteria of the SLFRF and as more fully described below; and

WHEREAS, amounts paid from the SLFRF are subject to restrictions outlined in the Guidance and as set forth in section 603(c) of the Social Security Act, as added by section 9901 of the American Rescue Plan Act; and

WHEREAS, the SLFRF 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 CSA desire to enter into this agreement for a public purpose and for the benefit of those essential workers who are relied on to maintain continuity of operations of essential critical infrastructure sectors, including those who are critical to protecting the health and wellbeing of their communities;

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

1. CSA agrees to abide by the Guidance provided under the ARPA, Coronavirus State and Local Fiscal Recovery Fund, and as more particularly described in section 603(c) of the Social Security Act and any further guidance issued by the United States Department of Treasury. **See Exhibit “A”**.
2. CSA represents that it has read and understood the terms and conditions of the SLFRF attached hereto as **Exhibit “A”** and as a condition of being a sub-recipient of SLFRF, CSA agrees to comply with all terms and conditions required of entities accepting funds through a sub-recipient agreement and CSA further warrants and represents to the County that the funds it will expend meet the criteria allowed under the SLFRF as outlined below.
3. ARPA provides that payments from the SLFRF may only be used to fund eligible uses, and specifically in this instance funds are being transferred —

To establish a premium pay program to respond to workers performing essential work during the COVID-19 public health emergency by providing premium pay to eligible workers.

As related to the eligible use identified above, costs should be incurred and/or obligated on or after March 3, 2021, and should be expended upon completion of the CSA premium pay program, and/or by March 31, 2022, whichever occurs first.

For purposes of the ARPA 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 dated June 24, 2021 and in the Interim Final Rule dated May 17, 2021, both provided in the attached **Exhibit “A”**, and in the additional SLFRF FAQ’s and guidance provided by the U.S. Department of Treasury (dated May 27, 2021, June 8, 2021, June 17, 2021, June 23, 2021, June 24, 2021, July 14, 2021, and July 19, 2021, and any subsequent amendments thereafter) which are attached hereto and incorporated by reference herein as **Exhibit “B” (to include any future updated guidance from the U.S. Treasury)**.

For the purposes of ARPA Funds, *eligible worker* means one who has been, and continues to be relied on to maintain continuity of operations of essential critical infrastructure sectors, including those who are critical to protecting the health and wellbeing of their communities.

For the purposes of ARPA Funds, *essential work* means, work involving regular in-person interactions or regular physical handling of items that were also handled by others”. A worker would not be engaged in essential work and, accordingly, may not receive premium pay for telework performed from a residence.

For the purposes of ARPA Funds, *premium pay* means an amount up to \$13 per hour in addition to wages or remuneration the worker otherwise receives and in an aggregate amount not to exceed \$25,000 per eligible worker is permitted. If premium pay would increase total pay above 150% of their State’s average annual wage, or their residing county’s, a brief written justification of how the premium pay is responsive to workers performing essential work during the public health emergency is required.

Additional guidance related to premium pay, eligible workers and essential work may be found in **Exhibit “A”** and **Exhibit “B”** as noted above.

4. County has designated funds in the amount of \$152,260.99 to be allocated to CSA to afford premium pay to eligible workers performing essential work as defined in the Act. These designated funds will be transferred to CSA for disbursement in accordance with the CSA’s premium pay program plan and budget for its eligible workers that meets the guidelines as outlined in the SLFRF. (**See attached Exhibit “C”**).
5. In consideration of the CSA’s representation that it will comply with the terms of the SLFRF and further agrees to comply with the terms of this sub-recipient Agreement,

County agrees it will transfer to CSA the amount necessary to fund the premium pay program as indicated in the attached **Exhibit “C”**. By March 31, 2022, CSA shall provide to County proof of disbursements in accordance with the premium pay plan for review and auditing by County, if necessary, to ensure the expenditures incurred meet the criteria as set forth in the premium pay program and the SLFRF.

6. CSA agrees to notify County in writing and obtain from County written approval, prior to any proposed changes, delays or departures from their proposed premium pay plan, and/or the requirements of this Agreement. Budget adjustments will be considered and may be submitted to Mr. Sergio Cruz, Hidalgo County Budget Officer, with final approval of the Hidalgo County Commissioners Court.
7. Upon request, CSA 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 necessary for performance under this Agreement.
8. This Agreement is effective upon execution and ends on December 31, 2026. The term of this Agreement may be extended by mutual agreement of the parties. The Agreement may be terminated by COUNTY without cause, upon thirty (30) days prior written notice to the other party.
9. CSA shall deliver a copy of all related supporting expense documentation, along with the Cost Reimbursement/Payment Request Form (attached hereto and incorporated by reference as **Exhibit “D”**), and the final report of COVID-19 related expenditures to COUNTY no later than December 31, 2026, and shall keep the supporting documentation for a minimum of three (3) years. CSA 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 CSA pertaining to this Agreement as it pertains to the use of federal funds.
10. **CONFLICT OF INTEREST.** CSA covenants that none of its 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 SLFRF. CSA agrees that all officers, employees, consultants or agents shall comply fully with the requirements of The SLFRF.
11. CSA agrees that no person who is an officer, employee, consultant, or agent of the 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 CSA is now seeking funds from the SLFRF.
12. CSA is responsible for repayment of funds associated with any conflict of interest

- that may occur either knowingly or unknowingly.
13. 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.
 14. 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.
 15. **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.**
 16. 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.
 17. 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.
 18. 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 CSA. 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.
 19. 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 CSA, and not otherwise.
 20. 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.
 21. 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 CSA: Jaime Longoria
CSA Executive Director
2524 N. Closner
Edinburg, Texas 78541
(956) 383-6240

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.

22. Neither party shall assign any right, benefit or duty under this Agreement without the other party's prior written consent.
23. This Agreement may be executed in any number of counterparts, including facsimile or scanned/mailed PDF documents. Each such counterpart, facsimile, or scanned/mailed PDF document shall be deemed an original instrument, all of which, together, shall constitute one and the same executed Agreement.
24. **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.
25. **SUCCESSORS.** This Agreement shall be binding upon and insure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, successors, and assigns where permitted by this Agreement.

26. 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 CSA policy, including without limitation race, gender, color, national origin, religion, sex, age, veteran status, disability or any other protected status. CSA shall comply with applicable law, including but not limited to the provisions of Title VI of the Civil Rights Act of 1964.
27. 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.
28. **LIABILITY FOR DISALLOWED COSTS.** CSA 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 SLFRF. CSA further understands and agrees that reimbursement to County of such disallowed costs shall be paid by CSA from funds that were not provided or otherwise made available to CSA pursuant to this Agreement or any other federal award.
29. **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.
30. **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 CSA has by operation of law.
31. 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.
32. **AUTHORITY TO EXECUTE.** The execution and performance of this Agreement by County and CSA have been duly authorized by all necessary laws, resolutions or corporate action, and this Agreement constitutes the valid and enforceable obligations of County and CSA in accordance with its terms.

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

Community Service Agency

Hidalgo County

Jaime Longoria, Executive Director

Judge Richard Cortez, County Judge

Date

Date

Approved the Hidalgo County Commissioners Court on the _____ date of November, 2021.

TABLE OF EXHIBITS

EXHIBIT – A **Coronavirus Relief Fund Guidance for State, Territorial, Local and Tribal Governments) (the “Guidance”) issued June 24, 2021; The Interim Final Rule dated May 17, 2021; and The Coronavirus Local Fiscal Recovery Fund Award Terms and Conditions– to include any future updated guidance**

EXHIBIT – B **Coronavirus State and Local Fiscal Recovery Funds FAQ’s issued on May 27, 2021, June 8, 2021, June 8, 2021, June 17, 2021, June 23, 2021, June 24, 2021, July 14, 2021, July 19, 2021– to include any future updated guidance**

EXHIBIT – C **Premium Pay Program and Proposed Budget**

EXHIBIT –D Cost Reimbursement/Payment Request Form